

From: [Hanf, Lisa](#) on behalf of [Greczmiel, Horst](#)
To: [JOHNSON, KATHLEEN \(Johnson.Kathleen@epa.gov\)](#); "[Robert Bonnie](#)"; "[Meryl Harrell](#)"; "[patrick.holmes@osec.usda.gov](#)"; "[mark.bisgeier@osec.usda.gov](#)"; "[Cal Joyner](#)"; "[Jim Upchurch](#)"; "[Zepeda, Gilbert -FS](#)"; "[Higgins, Jeanne M -FS](#)"; "[Daniels, Janine -FS](#)"; "[Patel-Weynand, Toral -FS](#)"; "[Ann Acheson - CEO](#)"; "[Joe Carbone](#)"; "[Kopocis, Ken](#); [Bromm, Susan](#); [Rader, Cliff](#); [Kaiser, Russell](#); [Blumenfeld, Jared](#); [Ryerson, Teddy](#); [Goforth, Kathleen](#); [Dunning, Connell](#); [Hanf, Lisa](#); [Brush, Jason](#); [Martynowicz, Trina](#); [Gaudario, Abigail](#); [Diamond, Jane](#); "[Blaine, Marjorie E SPL](#)"; "[Castanon, David J SPL](#)"; [Meg.E.Gaffney-Smith@usace.army.mil](#); "[Chip Smith](#)"; "[Dave Sire](#)"; "[Edwin Roberson](#)"; "[Raymond Suazo](#)"; "[Deborah Rawhouser](#)"; "[June Shoemaker](#)"; "[jean_calhoun@fws.gov](#)"; "[larry_bright@fws.gov](#)"; "[jason_douglas@fws.gov](#)"
Subject: FW: Rosemont Mine Weekly Call

-----Original Appointment-----

From: Greczmiel, Horst [mailto:[\(b\) \(6\)](#)]]

Sent: Monday, March 24, 2014 2:55 PM

To: Greczmiel, Horst; 'Robert Bonnie'; 'Meryl Harrell'; 'patrick.holmes@osec.usda.gov'; 'mark.bisgeier@osec.usda.gov'; 'Cal Joyner'; 'Jim Upchurch'; 'Zepeda, Gilbert -FS'; 'Higgins, Jeanne M -FS'; 'Daniels, Janine -FS'; 'Patel-Weynand, Toral -FS'; 'Ann Acheson - CEO'; 'Joe Carbone'; 'Kopocis, Ken'; 'Bromm, Susan'; 'Rader, Cliff'; 'Kaiser, Russell'; 'Blumenfeld, Jared'; 'Ryerson, Teddy'; 'Goforth, Kathleen'; 'Dunning, Connell'; 'Hanf, Lisa'; 'Brush, Jason'; 'Martynowicz, Trina'; 'Gaudario, Abigail'; 'Diamond, Jane'; 'Blaine, Marjorie E SPL'; 'Castanon, David J SPL'; 'Meg.E.Gaffney-Smith@usace.army.mil'; 'Chip Smith'; 'Dave Sire'; 'Edwin Roberson'; 'Raymond Suazo'; 'Deborah Rawhouser'; 'June Shoemaker'; 'jean_calhoun@fws.gov'; 'larry_bright@fws.gov'; 'jason_douglas@fws.gov'

Subject: Rosemont Mine Weekly Call

When: Occurs every Friday effective 3/28/2014 until 5/30/2014 from 3:00 PM to 4:00 PM Eastern Standard Time.

Where: Call in information is provided below

Call-in number:

* Local DC call in number [\(b\) \(6\)](#)

* For our colleagues outside the DC area, call-in number: [\(b\) \(6\)](#)

Passcode: [\(b\) \(6\)](#) #

From: [Greczmiel, Horst](#)
To: ["kimberly.m.colloton@usace.army.mil"](#); [Blumenfeld, Jared](#); ["cjoyner@fs.fed.us"](#); [Kopocis, Ken](#)
Cc: ["david.j.castanon@usace.army.mil"](#); [Bromm, Susan](#); ["jupchurch01@fs.fed.us"](#); ["robert.bonnie@osec.usda.gov"](#); ["benjamin_tuggle@fws.gov"](#)
Subject: Fw: augusta press release May 1, 2014 on permitting update
Date: Friday, May 02, 2014 10:22:39 AM

FYI - Augusta appears to have the process steps in order. We'll discuss further on the call today.

From: Alan Mintz [mailto:alm@vnf.com]
Sent: Friday, May 02, 2014 01:13 PM
To: Greczmiel, Horst; Horst Grezmiel <(b) (6)>
Subject: Fwd: augusta press release May 1, 2014 on permitting update

FYI. Thanks.

Sent from my iPhone

Begin forwarded message:

From: Jamie Sturgess <jsturgess@rosemontcopper.com>
Date: May 2, 2014 at 12:55:51 PM EDT
To: Alan Mintz <alm@vnf.com>
Subject: Re: augusta press release May 1, 2014 on permitting update

Augusta Resource provides permitting update

Friday, May 02, 2014

TORONTO, May 1, 2014 /PRNewswire/ - Augusta Resource Corporation (TSX and NYSE MKT: AZC) ("Augusta" or the "Company") provided a permitting update today on its Rosemont Copper Project ("Rosemont" or the "Project").

US Forest Service (USFS): Record of Decision

The objection review process for the draft Record of Decision ("ROD") concluded on April 30, 2014. Rosemont has been informed by the USFS that it will take additional time to review the approximately 100 comments received and has sent notices to each objector that the process will extend into May 2014. The USFS has said they will strive to issue a response to the objectors without undue delay and will provide an update on its progress and the schedule for the ROD by the end of May 2014.

Army Corps of Engineers (ACOE): Clean Water Act 404 Permit

Rosemont has been informed by the ACOE that there is a shortfall between the mitigation plan proposed in April and the mitigation needed to fully offset impacts to waters of the U.S. associated with the Project. The process of evaluating other permitting criteria, such as compliance with 404 guidelines, the evaluation of the public benefit, as well as a more detailed analysis of the mitigation plan, remain to be completed. The ACOE stated that this notification should not be taken as an indication that a permit decision has been made and they remain on schedule to deliver the permit decision for Rosemont by the end

of June 2014, provided that the USFS issues its Record of Decision prior to that date. The ACOE is continuing to work with Rosemont to address the ACOE's issues.

"We look forward to dialogue and details from the Army Corps of Engineers," says Katherine Arnold, Augusta's Vice-President of Environmental and Regulatory Affairs. "We know the impacts can be mitigated and we will continue to work with the Federal agencies towards a successful conclusion of the 404 and NEPA process without undue delay."

The Company's permitting guidance has been based on and been consistent with USFS guidance. At this time, guidance remains unchanged until a definitive schedule for the Record of Decision is provided by the USFS.

About Augusta

Augusta is a base metals company focused on advancing the Rosemont Copper deposit near Tucson, Arizona. Rosemont hosts a large copper/molybdenum reserve that would account for about 10% of U.S. copper output once in production (for details refer to www.augustaresource.com). The exceptional experience and strength of Augusta's management team, combined with the developed infrastructure and robust economics of the Rosemont project, propels Augusta to becoming a solid mid-tier copper producer. Augusta's shares are listed and posted for trading on the Toronto Stock Exchange and the NYSE MKT under the symbol AZC.

For more information, please visit: [Augusta Resource Corporation](http://www.augustaresource.com)

From: [Greczmiel, Horst](#)
To: [Gaudario, Abigail](#)
Subject: Re: Rosemont Friday Calls
Date: Friday, May 30, 2014 4:12:24 PM

Anything for Jared - and thank you!

From: Gaudario, Abigail [mailto:Gaudario.Abigail@epa.gov]
Sent: Friday, May 30, 2014 06:29 PM
To: Greczmiel, Horst
Subject: RE: Rosemont Friday Calls

Hi,

Jared says he needs a quick call with you next week. How about Tuesday, June 3 at 11 (2PM your time)? Will it work?

Abigail Gaudario

Office of the Regional Administrator
US EPA, Pacific Southwest Region 9
75 Hawthorne
San Francisco, CA 94105
(415) 947-4238
(415) 947-3588 - fax
gaudario.abigail@epa.gov

From: Greczmiel, Horst [mailto:[\(b\) \(6\)](#)]
Sent: Friday, May 30, 2014 2:24 PM
To: 'Robert Bonnie'; 'patrick.holmes@osec.usda.gov'; 'mark.bisgeier@osec.usda.gov'; 'Arthur.Blazer@osec.usda.gov'; 'Patel-Weynand, Toral -FS'; 'Ann Acheson - CEQ'; 'Joe Carbone'; 'Cal Joyner'; 'Jim Upchurch'; 'Zepeda, Gilbert -FS'; 'Higgins, Jeanne M -FS'; 'Daniels, Janine -FS'; 'Kopocis, Ken'; 'Bromm, Susan'; 'Rader, Cliff'; 'Kaiser, Russell'; 'Blumenfeld, Jared'; 'Goforth, Kathleen'; 'Dunning, Connell'; 'Hanf, Lisa'; 'Brush, Jason'; 'Martynowicz, Trina'; 'Gaudario, Abigail'; 'Diamond, Jane'; 'Brush, Jason'; 'Martynowicz, Trina'; 'Meg.E.Gaffney-Smith@usace.army.mil'; 'Chip Smith'; 'kimberly.m.colloton@usace.army.mil'; 'Castanon, David J SPL'; 'Blaine, Marjorie E SPL'; 'willie_taylor@ios.doi.gov'; 'Edwin Roberson'; 'Raymond Suazo'; 'Deborah Rawhouser'; 'June Shoemaker'; 'Benjamin_Tuggle@fws.gov'; 'steve_spangle@fws.gov'; 'jean_calhoun@fws.gov'; 'larry_bright@fws.gov'; 'jason_douglas@fws.gov'
Subject: Rosemont Friday Calls
Importance: High

This message provides the information from the calendar invite and the next steps leading up to the 6 June call:

Call-in number:

- Local DC call in number: [\(b\) \(6\)](#)
 - For our colleagues outside the DC area, all-in number: [\(b\) \(6\)](#)
- [\(b\) \(6\)](#)

Moderator (b) (6)

Calls take place every two weeks beginning 6 Jun 2014 at 3pm eastern time – except holidays (e.g., 6 June, 20 June, 18 July, 1 August, etc)

Next Steps;

1. (b)(5) - del berative
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

Thank you, Horst

Horst Greczmiel
Associate Director for NEPA Oversight
Council on Environmental Quality

2 (b) (6)
[Redacted]



Please consider the environment before printing this e-mail

From: [Greczmiel, Horst](#)
To: ["Robert Bonnie"](#); ["Meryl Harrell"](#); ["patrick.holmes@osec.usda.gov"](#); ["mark.bisgeier@osec.usda.gov"](#); ["Cal Joyner"](#); ["Jim Upchurch"](#); ["Zepeda, Gilbert -FS"](#); ["Higgins, Jeanne M -FS"](#); ["Daniels, Janine -FS"](#); ["Patel-Weynand, Toral -FS"](#); ["Ann Acheson - CEO"](#); ["Joe Carbone"](#); [Kopocis, Ken](#); [Bromm, Susan](#); [Rader, Cliff](#); [Kaiser, Russell](#); [Blumenfeld, Jared](#); [Ryerson, Teddy](#); [Goforth, Kathleen](#); [Dunning, Connell](#); [Hanf, Lisa](#); [Brush, Jason](#); [Martynowicz, Trina](#); [Gaudario, Abigail](#); [Diamond, Jane](#); ["Blaine, Marjorie E SPL"](#); ["Castanon, David J SPL"](#); [Meg.E.Gaffney-Smith@usace.army.mil](#); ["Chip Smith"](#); ["Dave Sire"](#); ["Edwin Roberson"](#); ["Raymond Suazo"](#); ["Deborah Rawhouser"](#); ["June Shoemaker"](#); ["jean_calhoun@fws.gov"](#); ["larry_bright@fws.gov"](#); ["jason_douglas@fws.gov"](#)
Subject: Rosemont 3pm Call
Date: Friday, April 25, 2014 4:32:46 AM attachment withheld (b)
Attachments: [4 25 14 Discussion prompt agency dependencies map.pptx](#) (5) deliberative

Following up on last week, we'll discuss the attached roadmap and hear updates on today's call. Our thanks to Jason in Region IX for providing the roadmap to facilitate today's discussion. Please take a moment to review it prior to the call.

Thank you, Horst

From: [Greczmiel, Horst](#)
To: [Kopocis, Ken](#); [Blumenfeld, Jared](#); "[meryl.harrell@osec.usda.gov](#)"; "[Marjorie.E.Blaine@usace.army.mil](#)"; "[david.j.castanon@usace.army.mil](#)"; "[rmsuazo@blm.gov](#)"; "[gzepeda@fs.fed.us](#)"; "[janinedaniels@fs.fed.us](#)"; "[jean_calhoun@fws.gov](#)"; [Gaudario, Abigail](#); [Ryerson, Teddy](#); "[bamme@blm.gov](#)"; [Goforth, Kathleen](#); "[robert.bonnie@osec.usda.gov](#)"; "[jshoemaker@blm.gov](#)"; "[cjoyner@fs.fed.us](#)"; "[lupchurch01@fs.fed.us](#)"; [Bromm, Susan](#); [Rader, Cliff](#); "[aacheson@fs.fed.us](#)"; "[jcarbone@fs.fed.us](#)"; [Meg.E.Gaffney-Smith@usace.army.mil](#); "[david_sire@ios.doi.gov](#)"; "[drawhaus@blm.gov](#)"; "[eroberso@blm.gov](#)"; "[jmhiggins@fs.fed.us](#)"; "[tpatelweynand@fs.fed.us](#)"; [Kaiser, Russell](#); [Martynowicz, Trina](#); "[patrick.holmes@osec.usda.gov](#)"
Subject: Rosemont Call
Date: Friday, March 21, 2014 12:18:06 PM

Technical problems force us to cancel this week's call. Horst will reach out to the individual offices and agencies. We will establish a new conference line and send out a new invitation early next week.

Thank you for your patience.

Regards, Horst

From: [Greczmiel, Horst](#)
To: ["Robert Bonnie"](#); ["patrick.holmes@osec.usda.gov"](#); ["mark.bisgeier@osec.usda.gov"](#); ["Arthur.Blazer@osec.usda.gov"](#); ["Patel-Weynand, Toral -FS"](#); ["Ann Acheson - CEO"](#); ["Joe Carbone"](#); ["Cal Joyner"](#); ["Jim Upchurch"](#); ["Zepeda, Gilbert -FS"](#); ["Higgins, Jeanne M -FS"](#); ["Daniels, Janine -FS"](#); ["Kopocis, Ken"](#); ["Bromm, Susan"](#); ["Rader, Cliff"](#); ["Kaiser, Russell"](#); ["Blumenfeld, Jared"](#); ["Goforth, Kathleen"](#); ["Dunning, Connell"](#); ["Hanf, Lisa"](#); ["Brush, Jason"](#); ["Martynowicz, Trina"](#); ["Gaudario, Abigail"](#); ["Diamond, Jane"](#); ["Brush, Jason"](#); ["Meg.E.Gaffney-Smith@usace.army.mil"](#); ["Chip Smith"](#); ["kimberly.m.colloton@usace.army.mil"](#); ["Castanon, David J SPL"](#); ["Blaine, Marjorie E SPL"](#); ["Dave Sire"](#); ["Edwin Roberson"](#); ["Raymond Suazo"](#); ["Deborah Rawhouser"](#); ["June Shoemaker"](#); ["Benjamin Tuggle@fws.gov"](#); ["steve_spangle@fws.gov"](#); ["jean_calhoun@fws.gov"](#); ["larry_bright@fws.gov"](#); ["jason_douglas@fws.gov"](#)
Subject: Rosemont Fri 3pm (eastern) call 30May
Date: Thursday, May 29, 2014 6:24:30 AM
Attachments: [Corps Path Forward on RM permit.pdf](#) attachment withheld (b)(5) deliberative

Call-in number:

- Local DC call in number: (b) (6)
- For our colleagues outside the DC area, call-in number: [REDACTED]

Agenda:

- (b)(5) - deliberative [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Regards, Horst

Horst Greczmiel
Associate Director for NEPA Oversight
Council on Environmental Quality



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From: [Greczmiel, Horst](#)
To: ["Robert Bonnie"](#); ["patrick.holmes@osec.usda.gov"](#); ["mark.bisgeier@osec.usda.gov"](#); ["Arthur.Blazer@osec.usda.gov"](#); ["Patel-Weynand, Toral -FS"](#); ["Ann Acheson - CEO"](#); ["Joe Carbone"](#); ["Cal Joyner"](#); ["Jim Upchurch"](#); ["Zepeda, Gilbert -FS"](#); ["Higgins, Jeanne M -FS"](#); ["Daniels, Janine -FS"](#); ["Kopocis, Ken"](#); ["Bromm, Susan"](#); ["Rader, Cliff"](#); ["Kaiser, Russell"](#); ["Blumenfeld, Jared"](#); ["Goforth, Kathleen"](#); ["Dunning, Connell"](#); ["Hanf, Lisa"](#); ["Brush, Jason"](#); ["Martynowicz, Trina"](#); ["Gaudario, Abigail"](#); ["Diamond, Jane"](#); ["Brush, Jason"](#); ["Martynowicz, Trina"](#); ["Meg.E.Gaffney-Smith@usace.army.mil"](#); ["Chip Smith"](#); ["kimberly.m.colloton@usace.army.mil"](#); ["Castanon, David J SPL"](#); ["Blaine, Marjorie E SPL"](#); ["willie_taylor@ios.doi.gov"](#); ["Edwin Roberson"](#); ["Raymond Suazo"](#); ["Deborah Rawhouser"](#); ["June Shoemaker"](#); ["Benjamin Tuggle@fws.gov"](#); ["steve_spangle@fws.gov"](#); ["jean_calhoun@fws.gov"](#); ["larry_bright@fws.gov"](#); ["jason_douglas@fws.gov"](#)
Subject: Rosemont Friday Calls
Date: Friday, May 30, 2014 2:24:35 PM

This message provides the information from the calendar invite and the next steps leading up to the 6 June call:

Call-in number:

- Local DC call in number : 2 (b) (6)
- For our colleagues outside the DC area, all-in number: (b) (6)

Calls take place every two weeks beginning 6 Jun 2014 at 3pm eastern time – except holidays (e.g., 6 June, 20 June, 18 July, 1 August, etc)

Next Steps;

1. (b)(5) - del berative [REDACTED]

Thank you, Horst

Horst Greczmiel
Associate Director for NEPA Oversight
Council on Environmental Quality

(b) (6)



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To: ["Robert Bonnie"](#); ["Meryl Harrell"](#); ["patrick.holmes@osec.usda.gov"](#); ["mark.bisgeier@osec.usda.gov"](#); ["Cal Joyner"](#); ["Jim Upchurch"](#); ["Zepeda, Gilbert -FS"](#); ["Higgins, Jeanne M -FS"](#); ["Daniels, Janine -FS"](#); ["Patel-Weynand, Toral -FS"](#); ["Ann Acheson - CEO"](#); ["Joe Carbone"](#); [Kopocis, Ken](#); [Bromm, Susan](#); [Rader, Cliff](#); [Kaiser, Russell](#); [Blumenfeld, Jared](#); [Ryerson, Teddy](#); [Goforth, Kathleen](#); [Dunning, Connell](#); [Hanf, Lisa](#); [Brush, Jason](#); [Martynowicz, Trina](#); [Gaudario, Abigail](#); [Diamond, Jane](#); ["Blaine, Marjorie E SPL"](#); ["Castanon, David J SPL"](#); [Meg.E.Gaffney-Smith@usace.army.mil](#); ["Chip Smith"](#); ["Dave Sire"](#); ["Edwin Roberson"](#); ["Raymond Suazo"](#); ["Deborah Rawhouser"](#); ["June Shoemaker"](#); ["jean_calhoun@fws.gov"](#); ["larry_bright@fws.gov"](#); ["jason_douglas@fws.gov"](#)
Cc: [Patel, Manisha](#)
Subject: Rosemont Mine Friday Calls and Follow-up
Date: Monday, March 24, 2014 2:54:08 PM
Attachments: [AZ Residents Ltrs to COL Colloton USACE Los Angeles proposed Rosemont Mine - 5-11 Mar 14.pdf](#)
[AZ Residents Ltrs COL Colloton USACE Los Angeles proposed Rosemont Mine 4-5 Mar 14.pdf](#)
[Sierra Vista Chamber SE AZ Eco Dev Grp Ltrs to USACE LA Rosemont Mine 6 12 Mar 14.pdf](#)
[Corps of Engineers Public Interest Review Regulation.docx](#)
[RosemontACKLetter.docx](#)
[RosemontSetAsideNoCommentTemplate.docx](#)
[RosemontSetAsideNotBasedOnPreviousCommentsTemplate.docx](#)
[Mining Claims BLM Pamphlet May 2011.pdf](#)
[USFS Manual 2800 Chapter 2810 Mining Claims.doc](#)
[Corps of Engineers Public Interest Review Regulation.docx](#)

A new recurring invitation with new call in information for the Friday 3pm call is being sent shortly.
For those unable to open invitations, the call-in information is:

Call-in number:

- Local DC call in number: (b) (6)
- For our colleagues outside the DC area, call-in number: (b) (6)

Following up on the most recent calls:

1. Please confirm/update your FOIA specialists and their emails so that we can connect them with one another to facilitate coordinating responses:
 - a. EPA: Rich Campbell in Region IX
 - b. CEQ: Brooke Donner at (b) (6)
 - c. USFS: Raquel Cantu at raquelcantu@fs.fed.us
 - d. Corps
 - e. BLM
 - f. FWS
 - g. DOI

and attached find the following information that was requested/offered during the last several calls:

2. Examples of letters sent to those who submitted objections to the USFS (see attached: Rosemont ACKLetter; RosemontSetAsideCommentTemplate; and RosemontSetAsideNotBasedOnPreviousCommentsTemplate)
3. Additional constituent letters received (see attached: AZ Residents Ltrs to COL Colloton; and Sierra Vista Chamber_SE AZ EcoDev Grp);
4. Background on BLM/USFS handling of Mining Claims (see attached: Mining Claims BLM Pamphlet; and USFS Manual 2800 Chapter 2810); and
5. Regulation on Corps' Public Interest Determination (see attached Corps of Engineers Public

Interest Review Regulations).

Regards,

Horst

Horst Greczmiel

Associate Director for NEPA Oversight
Council on Environmental Quality



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3/4/14

James & Patricia Mayo

(b) (6)

Kimberly Colloton, Colonel
U.S. Army Corps of Engineers
Los Angeles District
915 Wilshire Blvd.
Los Angeles, CA 90017

RECEIVED

MAR 19 2014

**Office of the ASA(CW)
Washington, DC**

Ms. Kimberly Colloton,

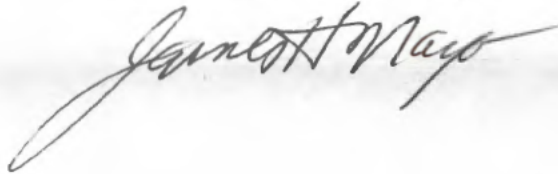
We are writing to express our support of Rosemont Copper. They have gone through intensive scrutiny and have worked hard to adequately and successfully address environmental concerns. It is clear to us that they will minimize their impact on nature, while supplying a greatly needed resource. A boost to our local economic welfare through jobs and tax revenue, a boost to our national economic welfare through lessened pressures on copper imports, and a boost to the environmental standard of mining in the United States through Rosemont's water techniques throughout their operations and clear stewardship beyond the mine.

It is critical that the people in Pima County be given quality opportunities to provide for their families, and yet the continuing delays that have been put upon Rosemont are only holding those opportunities back. It is clear from the recent positive review of the environmental impact statement from the Forest Service, along with the countless approvals prior, that local, state and federal agencies agree and see the merit in Rosemont. I hope the Army Corps will as well.

So please, help stay the course and approve the 404 permit today.
Finalize your record of decision as soon as possible.

In appreciation,

James and Patricia Mayo

A handwritten signature in cursive script, appearing to read "Janet Mayo". The signature is written in dark ink and is positioned below the printed name "James and Patricia Mayo".

The above letter was also sent to: Tom Vilsack, John McHugh, Jo-Ellen Darcy, Gina McCarthy, and Michael Boots.

Douglas and Mary Austin

(b) (6)

Kimberly Colloton
Colonel
US Army Corps
LA District
915 Wilshire Blvd.
Los Angeles, CA 90017
3/4/14

Colonel Kimberly Colloton, US Army Corps:

Arizona is the United States' main producer of copper. Economically speaking, it makes complete sense that Arizonans should benefit from the jobs, money, and tax revenue that go with mining the copper. Rosemont Copper will give Arizonans this opportunity, and will do so in such a way that the environment will also be taken care of. The combination of modernized mining techniques to protect and reduce water use including dry stack tailings, environmental regulation and oversight, and improved awareness of the value of natural resources means that the environment will not suffer from this mine in any way.

Federal and state agencies have approved this project, and there's no reason the US Army Corps of Engineers shouldn't do the same. As part of the Environmental Impact Statement, historic, cultural, scenic and recreational values were studied, and I understand your agency will review the Forest Service's analysis as part of your decision making process. Rosemont's plans, as the EIS analysis shows, the Rosemont site is not a national park or a national scenic area. The area does have a significant history of mining and that is deeply rooted in our culture here. Above and beyond the strict environmental standards and policies employed at the mine property and their mitigation plans, Rosemont Copper has committed to permanently conserve 4,500 acres of land for the public along with

Douglas and Mary Austin

(b) (6)

allocating more than 550 million gallons a year of private surface water to the public.

So much study has been completed. Please stick to the facts and ignore political special interests. I look forward to your timely approval of Rosemont's 404 permit.

Respectfully,

Douglas and Mary Austin

A handwritten signature in cursive script, appearing to read "Doug W Austin".

A copy of this letter will be sent to the following individuals:

Gina McCarthy, EPA

Tom Vilsack, USDA

John McHugh, US Army

Jo-Ellen Darcy, USACE

Michael Boots, White House Council on Environmental Quality

3/5/14

A copy of this letter has been sent to Tom Vislack, John McHugh, Jo-Ellen Darcy, Gina McCarthy, and Michael Boots.

Colonel Kimberly Colloton
U.S. Army Corps of Engineers
L.A. District
915 Wilshire Blvd.
Los Angeles, CA 90017

Dear Colonel Colloton,

We want to express our support for The Rosemont Copper mine and ask for your swift approval of their 404 water permit. The mine is sorely needed to improve Arizona's struggling economy. They address all the relevant issues, such as bringing in more than 400 new, good-paying jobs, supporting thousands more in the region over the 20+ years of the mine's life, and bringing in an additional \$700 million in local economic stimulus each year.

But Rosemont is more than just an economic stimulus. They have continually shown concern for both protection and utilization of important resources. Copper is an incredibly important metal, used in everything from medical devices to military equipment. The ability to produce it in the US and not have to rely on outside sources is significant. As for protection, Rosemont will minimize impacts to the environment, using only one-third of the water used by traditional mines and leaving a much smaller footprint.

The U.S. Forrest Service, as well as many other agencies, have completed detailed evaluations and issued a Record of Decision to approve Rosemont. Thank you in advance for your thorough and thoughtful review - now let's finalize it!

Best regards,



Charles and Verna Bailer
Rosemont Mine Supporters

(b) (6)

PS - THE MINE WILL GIVE DECENT PAY TO INDIVIDUALS
THAT DO NOT HAVE A COLLEGE EDUCATION - "NO POLITICS"
TUCSON NEEDS THESE TYPE OF JOBS!

Howard and Betty Grant

(b) (6)

Colonel Colloton
LA District
U.S. Army Corps of Engineers
915 Wilshire Blvd.
Los Angeles, CA 90017

3-5-2014

U.S. Army Corps, Colonel Colloton,

We are very strong supporters of Rosemont Copper and all of the incredible things they propose. We welcome the mine's completed development, as well as the suite of economic benefits to be gained. The contribution to our community and area is vast and deeply needed.

Having said this, we would like to ask you to follow the U.S. Forest Service's approval (FEIS and ROD) by issuing the very last federal permit required – the 404 permit. We greatly value the insights and diligence you contributed to the Forest Service's final document that guided the approval in the Record of Decision.

Arizona, like most of the U.S., has been in a recession for much too long. Families are struggling to make ends meet, businesses are closing up shop because residents aren't buying, the education sector is suffering, and our fire and police are underpaid. As you already know, Rosemont will cure these ailments and they'll do so with little environmental impact.

Our waters will be protected during and after the life of the mine, thanks to Rosemont's forethought to store water ahead of time and the recycling


Howard and Betty Grant

(b) (6)

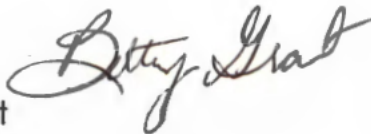
techniques they will utilize throughout operations such as dry tailings. Their conservation program will further protect thousands of acres of land for the public and hundreds of millions of gallons of surface water – streams and creeks – for the public.

For all of these reasons and more, they should receive their 404 permit. We can't afford to wait any longer for Rosemont. The decision must be made now, for the good of Arizona. Thank you for your attention.

Sincerely,



Howard and Betty Grant



A copy of this letter has also been sent to Tom Vilsack, John McHugh, Jo-Ellen Darcy, Gina McCarthy, and Michael Boots.

Kimberly Colloton
Colonel
US Army Corps of Engineers
LA District
915 Wilshire Blvd.
Los Angeles, CA 90017

March 5, 2014

Colonel Kimberly Colloton:

The Rosemont Copper mine is the opportunity that our community needs. Please make this happen as soon as possible by issuing the 404 permit.

Rosemont's plan is an answer to a big problem that we have had here for a while - the problem of unemployment. Rosemont will create thousands of well-paying jobs, and this community has too many people out of work or underemployed. Good people like my brother need work. More jobs means a stronger, more cohesive community.

The fact of the matter is that Rosemont will bring about so many more benefits to our community, the area - and the industry - than the minor adverse impacts.

The project's benefits reach beyond the Pima County and Arizona border as well. Our country needs copper, and developing domestic resources increases our country's value of national output of goods because we import less of these raw materials and metals.

Of course the permit you are issuing is a water permit - Rosemont will use significantly less - about 60% less than traditional mining operations. The use of dry stack tailings will surely revolutionize the entire industry. And the thorough and meticulously analyzed studies show our water is safe.

Thank you for your consideration to these and all the facts of this proposed project. I'm confident that when fully considered, you will agree with the countless regulatory agencies that have already approved Rosemont.

Sincerely,



John and Carolyn Marquis

(b) (6)

To: Col. Colloton, US Army Corps of Engineers Los Angeles District
CC: Jo-Ellen Darcy, Tom Vilsack, Gina McCarthy, Michael Boots, John McHugh

Colonel Colloton-

Our need for Rosemont's planned copper mine is greater than ever. It is clear to anyone with eyes to see how important and necessary it is that Rosemont be given the final approvals to move ahead with their plans.

Our technological and economic future absolutely depends on the mining of copper, a resource which has really been the life's blood of this state since its beginning! The demand for copper throughout the country, in a wide array of areas, is so high. Medicine, renewables, and even the defense industry rely on copper. We have the resource, we have the people anxious and ready to go to work to mine it, and we have a soaring debt and high unemployment rate that is begging for relief!

Rosemont has gone above and beyond when meeting the public's concerns about the environment. Rosemont will also conserve 4,500 acres of pristine land, and allocate 550 million gallons a year of private surface water rights to the public. Not to mention using the least amount of water of any other mine in the area - less than our golf courses and pecan farms as well!

Economically Rosemont just cannot be ignored, especially when looking at their benefits to the local community and how they will contribute to the many needed improvements in the local economic base. The 2,900 jobs and huge increase in tax revenue will certainly lead to an increase in the welfare of the people in Pima County.

The Forest Service has approved Rosemont through their official Record of Decision, which is being finalized. Surely that counts for something. The only logical thing to do at this point is to lend your final approval of Rosemont's 404 permit. Thank you for issuing their permit today.

All the best,

Jeremy Gypton

(b) (6)

B





123 W. KINO PARK * NOGALES, ARIZONA 85621

Phone: 520 - 287-3685 * Fax: 520- 287-3687

Email: info@thenogaleschamber.com

Website: www.thenogaleschamber.com



March 7, 2014

Col. Kimberly M. Colloton, PMP
U.S. Army Corps of Engineers
915 Wilshire Blvd.
Los Angeles, California 90017

Dear Col. Colloton:

As President/CEO of the Nogales-Santa Cruz County Chamber of Commerce established in 1914, I have seen how critical a mine can be to a community's local economy and future. Not only does mining bring numerous employment opportunities, but it also provides secure and well paying jobs for a definite amount of time. With a high unemployment rate for the over 47,000 residents in Santa Cruz County, the Rosemont Copper Mine project will be a vital boost to our county's future economic stability.

Opportunities can be found not only in the vast amount of underground minerals. Significant expansion of the mining industry and high levels of investment in the sector are also creating opportunities for a wide range of players in many ancillary industries. Rosemont Copper will bring 1600 indirect jobs annually and business opportunities in sectors such as construction, retail/wholesale, utilities, real estate and technology services to our struggling families and businesses in Southern Arizona.

Today's mining has incorporated state-of-the-art environmentally friendly technologies, as well as safety procedures and infrastructures to yield high quality products that meet international market standards. Rosemont Copper is committed to sustainable projects that prioritize the safety of mineworkers, environmental responsibility, collaborating with communities and working with the businesses where they operate.

Many are concerned that mines have detrimental effects on the wildlife in the area. Rosemont Copper has made this respective concern a high priority. In their recent Final Environmental Impact Statement, Rosemont Copper received high rankings for addressing this and other concerns through various mitigation commitments.

The Nogales-Santa Cruz Chamber recognizes Rosemont Copper as essential for the betterment of Santa Cruz County. We urge you to continue working through the permitting process expeditiously. In addition, we are hopeful you find, as we have, that Rosemont Copper can provide a unique and much needed opportunity while addressing the best interests of the community at large.

Thank you for allowing me to express our opinion in support of Rosemont Copper. If you have any questions or concerns, please feel in contacting me.

Sincerely,

Olivia Rinza-Kramer

President & CEO

Cc:

The Honorable Tom Vilsack
Secretary of Agriculture
U.S. Department of Agriculture
1400 Independence Ave., SW
Washington, DC 20250

The Honorable John McHugh
Secretary of the Army
101 Army Pentagon
Room 3E700
Washington, DC 20310-0101

The Honorable Jo-Ellen Darcy
Assistant Secretary for Civil Works
108 Army Pentagon
Room 3E446
Washington, DC 20310-0108

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Michael Boots
Acting Director
White House Council on Environmental Quality
722 Jackson Place, NW
Washington, DC 20503

Copy

3.9.14

Kimberly Colloton, Colonel
U.S. Army Corps of Engineers, LA District
915 Wilshire Boulevard
Los Angeles, CA 90017

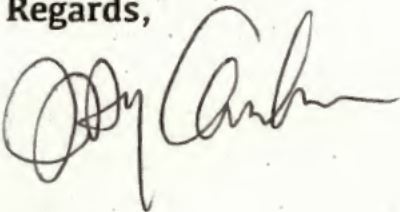
Dear Col. Colloton:

Anyone who knows anything about Arizona's rich history knows that copper is and has been an indispensable part of our economy. The need for copper in this country and in the world has only continued to grow! Rosemont is a way for us to not have to rely on foreign imported copper. There is a national concern for both protection and utilization of important resources, and Rosemont understands this concern. Yes, protecting the environment is important, and continuing to build sustainable technologies is integral to that task.

However, in order to do that, we need copper!! So when the environmentalists continue to delay Rosemont's copper mine, they really are holding back their own interests! The U.S. Forest Service's Record of Decision shows clearly that Rosemont plans to utilize the latest most ecologically sound practices, so we're not talking about the crude, insensitive operations of the past! We're talking about a safe and sane mine that is providing a necessary resource that we *require* to build our hybrid cars, our wind turbines, our solar panels and the like. You should give the Forest Service's determination to move forward, considerable consideration as part of your own review.

I am imploring you to stand up for what you can clearly see is the right course of action; bring this needless commenting period to a close and issue Rosemont their final major permit, their 404 water permit. We need the jobs, we need the copper, and we need to move forward with securing the economy and the future of this state, and this country!

Regards,



Jay Anderson

(b) (6)

A copy of this letter also sent to:
Honorable Tom Vilsack, Honorable Gina McCarthy, Honorable John McHugh,
Honorable Jo-Ellen Darcy and Mr. Michael Boots

✓

Mr. Tom Soto

(b) (6)

United States Army Corps of Engineers

Attention: Los Angeles District Colonel Kimberly M. Colloton

915 Wilshire Boulevard

Los Angeles, CA 90017

CC: Gina McCarthy, EPA

Tom Vilsack, USDA

Michael Boots, Council on Environmental Quality

Jo-Ellen Darcy, US Army Corps of Engineers

John McHugh, US Army

3-9-2014

Col. Colloton:

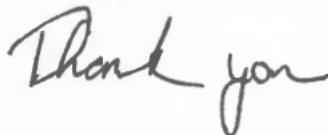
I want you at the Army Corps of Engineers to understand how important I think Rosemont's approval is. From what I have seen over the years of reviews, the environmental impact of their mine will be minimal, and yet the impact on our job market and economic climate will be tremendous! There will be more than \$300 million in local tax dollars that will bring some much-needed relief to the communities' economy.

I have been a long time supporter of Rosemont because they have a vision. They are going about things in the right way, using the most modern equipment, and have reclamation in place right at the outset, and they care about this community. You've seen and studied the plans so I'm not telling you anything you don't already know. Their use of dry stack tailings and the fact that they will use

80% less water than traditional mines are just two examples of how they are going to minimize their environmental impacts.

I have 3 sons with exceptional abilities and training who are in need of good employment and are counting on Rosemont to open so they can put those skills to good use. More delay will only continue to waste the talents of all our idle work force. The Forest Service is moving forward, as I'm sure you know. That should matter to your agency. Please, be sensible and give Rosemont their final permit they need and deserve. It's the right thing to do.

Much appreciated,

A handwritten signature in cursive script that reads "Thank you".

Tom Soto

A handwritten signature in cursive script that reads "Tom Soto".



823 E. Speedway
Tucson, AZ 85719

520.620.0005

Fax 520.844.7071

www.tucsonhispanicchamber.org

March 11th, 2014

Chairwoman:

Carlos Ruiz
HT Metals

Vice-Chair /

Guillermo Figueroa
Century Link

Treasurer:

Tannya Gaxiola
Quikhelp

Secretary:

Laura Oldaker
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Evergreen Mortuary,
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Francisco Melero
Melero International

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Luis Fernando Parra
Parra Law Firm

Glenn Harner
Arizona Chamber of Commerce
and Industry

Alma Gallardo
Arizona Bilingual

Dr. Regina Najera
Ophthalmologist

Dr JP Jones
University of Arizona

Pam Crim
Cox Business

Anthony Snider
Wells Fargo

President/CEO

Lea Marquez Peterson, MBA, IOM

Colonel Kimberly M. Colloton, PMP
Los Angeles District
U.S. Army Corps of Engineers
915 Wilshire Blvd.
Los Angeles, CA 90017

Dear Col. Colloton,

I am writing on behalf of the Tucson Hispanic Chamber of Commerce and the 1000+ business members represented by our chamber. First, I would like to commend your efforts on the Rosemont Copper Project in Arizona and the necessary steps you have taken to ensure a smooth permitting process. It is to our understanding that the Corps has conducted a rigorous EIS process and have taken the responsibility for Section 404 permitting. It is encouraging to know that you are trying to make this process as quick and efficient as possible and for that, we thank you.

As a business organization, we are extremely excited for the 2,100 annual jobs that this project will create, the \$701 economic impact on Southern Arizona and the \$1.3 billion national impact to the United States. We are also in favor of our natural resources being produced on American soil. For these reasons, the Tucson Hispanic Chamber of Commerce commends you and your colleagues for your dedication to the success of this project. After a 6 year review process, we encourage you to continue to complete the permitting process as efficiently as possible for the benefit of business and the economy.

Sincerely,

Lea Marquez Peterson
President/CEO
Tucson Hispanic Chamber of Commerce

Your Opportunity for Greater Success - Su Oportunidad para Mayor Éxito



823 E. Speedway

Tucson, AZ 85719

520.620.0005

Fax 520.844.7071

www.tucsonhispanicchamber.org

Cc:

The Honorable Tom Vilsack
Secretary of Agriculture
U.S. Department of Agriculture
1400 Independence Ave., SW
Washington, DC 20250

The Honorable John McHugh
Secretary of the Army
101 Army Pentagon
Room 3E700
Washington, DC 20310-0101

The Honorable Jo-Ellen Darcy
Assistant Secretary for Civil Works
108 Army Pentagon
Room 3E446
Washington, DC 20310-0108

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Michael Boots
Acting Director
White House Council on Environmental Quality
722 Jackson Place, NW
Washington, DC 20503

Your Opportunity for Greater Success - Su Oportunidad para Mayor Éxito

3-4-14

Colonel Colloton
L.A. District
U.S. Army Corps of Engineers
915 Wilshire Blvd.
Los Angeles, CA 90017

RECEIVED

MAR 19 2014

**Office of the ASA(CW)
Washington, DC**

Colonel Colloton:

I'm writing because I believe the benefits of Rosemont Copper are too large to overlook. We need 404 permit approval and we need it soon. The mine will bring job opportunities to Tucson and Southern Arizona, while setting new standards for environmental sustainability and efficiency.

We are looking at some 2,900 jobs being created by the mine, about \$30 billion in personal income, and a huge increase in the welfare of the people in Pima county and surrounding communities. The economic benefits of this project are important to the local community and will contribute to needed improvements in the local economic base, such as an additional \$700 million in local economic stimulus each year.

Sustainability is also important to Rosemont, and years of careful planning and environmental review ensure that Rosemont's operations will reflect the highest standards for sustainability. They understand that water is an essential resource, necessary to human survival, economic growth, and the natural environment, which is why their mine will use 80% less water than traditional mines. They have received the US Forest Service's Final Environmental Impact Study as well as the Record of Decision for approval. You should give this substantial consideration in your public interest review.

I support Rosemont Copper, and look forward to seeing the project progress with the final stage of approval.

Respectfully,

Don Collins

Don Collins

(b)(6)

cc: Tom Vilsack
John McHugh
Jo-Ellen Darcy
Gina McCarthy
Michael Boots

Janie Caldwell ❖ (b) (6)

3/5/14

Kimberly Colloton
Colonel, U.S. Army Corps of Engineers
Los Angeles District
915 Wilshire Blvd.
Los Angeles, CA 90017

Ms. Kimberly Colloton:


We have been following Rosemont Copper's progression very closely through the bureaucratic process over the past seven years. My husband did the grading for M3 engineering, and has some insight into the process. As they near the end of this long and arduous process I ask for a detailed quick review process so that Rosemont can gain their 404 water permit.

Arizona is in desperate need of everything that Rosemont has to offer: the jobs, the amazing salaries, the increase in tax revenue, the boost in morale, and more copper, mined in an environmentally friendly way, to keep the U.S. in the running for renewable resource production. All of these benefits that are expected to accrue from the proposal, balanced against any reasonably foreseeable detriments, certainly outweigh them.

Looking beyond Rosemont's substantial benefits, there is also their dedication to the highest standards for sustainability. All off their years of environmental review have confirmed that Rosemont will minimize their impacts to the environment, including 80% less water usage than traditional mines, and a much smaller footprint.

The last step in this process is to get the 404 permit, so let us make sure we stay true to our course.

Regards,



Janie Caldwell

The above letter was also sent to Tom Vilsack, John McHugh, Jo-Ellen Darcy, Gina McCarthy, and Michael Boots.



March 06, 2014

**Executive
Officers**

Michael Benson
Chairman
TDY Housing

DeeDee Hoeft
Past Chair
Wells Fargo Home
Mortgage

Rick Shelley
Chair Elect
Horizon Moving
Systems of Sierra Vista

Jack Blair
Secretary
SSVEC

Anita Farrow
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Nathan Williams Law
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Mall at Sierra Vista

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Sierra Toyota

Phil Vega
Sierra Vista Herald &
Bisbee Review

Glen Cobb
Sierra Suites

Mary Tieman
Arizona Workforce
Connection

Kevin Peterson
CGI

RECEIVED

MAR 20 2014

**Office of the ASA(CW)
Washington, DC**

COL Kimberly M. Colloton, PMP
U.S. Army Corps of Engineers
915 Wilshire Blvd.
Los Angeles, CA

Dear COL Colloton,

I am writing on behalf the Sierra Vista Area Chamber, the largest business organization in Cochise County, representing 662 members and approximately 14,000 employees. One of our core values is to engage in business advocacy and legislative action, The Chamber works tirelessly to stay current on as many issues as possible at the local, state and federal levels. Each month the Chamber's Business Advocacy Committee meets to discuss issues that are affecting or have the potential to affect our businesses.

We are grateful for the hard work your agency has devoted to the Rosemont Copper Project in Arizona. The Corps of Engineers has played an extensive and important role in this process, guiding the Final Environmental Impact Statement (FEIS) process and managing the 404 permitting process under the Clean Water Act.

Since the original application and the subsequent public notice for this project by the Corps in December 2011, the permitting process has continued to evolve. This evolution has taken time, and as the largest business organization in Southern Arizona, we are naturally concerned when unnecessary regulatory delays in the permitting and environmental review process prevent good projects from proceeding so they can bring economic strength and jobs to our community. We understand the Corps is pushing the process forward and we appreciate that approach.

From our perspective, it seems that Rosemont Copper, regulatory agencies, tribes, conservation groups and the community have collaborated to identify the best possible plan for Rosemont. Rosemont will provide 10% of the nation's copper production. Producing copper domestically is something in the public's best interest. It is far better to have our natural resources "Made in the USA" rather than on foreign soil. We are impressed with Rosemont's approach to land and water conservation.

As a business organization, we await Rosemont's anticipated employment of almost 2,000 workers for two years during construction, 450 direct employees



for mine operations and more than 1,700 indirect jobs. These jobs are expected to produce a \$3.3 billion increase in personal income over the 20-year life of the mine. The project will put Arizonans to work with above average compensation levels.

The Sierra Vista Area Chamber commends you and your colleagues for your commitment to a thorough, credible permitting process. We urge you to continue working through the permitting process expeditiously and that you find, as we did, that Rosemont provides a unique opportunity to provide a large public benefit while mitigating impacts.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael J. Benson".

Michael J Benson
Chairman of the Board

A handwritten signature in black ink, appearing to read "Deanna La Velle".

Deanna La Velle
Executive Director

Cc:

The Honorable Tom Vilsack
Secretary of Agriculture
U.S. Department of Agriculture
1400 Independence Ave., SW
Washington, DC 20250

The Honorable John McHugh
Secretary of the Army
101 Army Pentagon
Room 3E700
Washington, DC 20310-0101

The Honorable Jo-Ellen Darcy
Assistant Secretary for Civil Works
108 Army Pentagon
Room 3E446
Washington, DC 20310-0108

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Michael Boots
Acting Director
White House Council on Environmental Quality
722 Jackson Place, NW
Washington, DC 20503

Southeast Arizona Economic Development Group

168 East 4th Street

Benson, AZ 85602

www.saedg.org

03-12-14

Col. Kimberly M Colloton
US Army Corps of Engineers
915 Wilshire Blvd.
Los Angeles, California 90017

Dear Col. Colloton;

I am writing on behalf of the members of the Southeast Arizona Economic Development Group (SAEDG) and the employees those companies represent. SAEDG was created in 2007 to work with existing and prospective business-owners and other stakeholders in Cochise County Arizona to identify, develop and expand opportunities within the Cochise County AZ region. SAEDG believes the prosperity of Southeast Arizona depends on the stability and vitality of all area businesses, large and small. Expanding and strengthening economic activity throughout the region ensures healthier communities. Our organization works closely with private and public partners to promote business ownership and related support channels in Southeast Arizona.

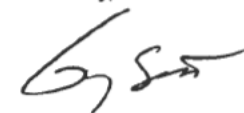
We are grateful for the work your agency has devoted to the Rosemont Copper Project in Southern Arizona. The Corps of Engineers has had an extensive and important role in this process, guiding the Final Environmental Impact Statement (FEIS) process and managing the 404 permitting process under the Clean Water Act.

Since the original application and the subsequent public notice for this project by the Corps in 2011, the permitting process has continued to move forward. We are concerned when unnecessary regulatory delays in permitting and environmental review processes keep projects from proceeding. We appreciate the fact that the Corps is pushing the process forward and we appreciate that approach.

As a business organization we look forward to the approximately 2000 jobs during the construction period and the 450 employees for mining operations. This project will put Southern Arizonans to work with above average compensations levels in the mining industry.

Southeast Arizona Economic Development Group appreciates your commitment to a thorough, credible permitting process. We urge you to continue working through the permitting process and allow the Rosemont Copper Project to move forward.

Sincerely,



George Scott
Director

Cc:

The Honorable Tom Vilsack
Secretary of Agriculture
US Department of Agriculture
1400 Independence Ave. SW
Washington, DC 20250

The Honorable John McHugh
Secretary of the Army
101 Army Pentagon
Room 3E700
Washington, DC 20310-0108

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1200 Pennsylvania Ave. NW
Washington, DC 20460

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Assistant Secretary for Civil Works
108 Army Pentagon
Room 3E446
Washington, DC 20310-0108

Michael Boots
Acting Director
White House Council on Environmental Quality
722 Jackson Place, NW
Washington, DC 20503

Board of Directors

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Corps of Engineers Public Interest Review

IAW 33 CFR 325.3(c)(1):

“The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people.”

Dear

We received your timely objection of Forest Supervisor Jim Upchurch's Final Environmental Impact Statement and draft Record of Decision for the Rosemont Copper Mine Project. Your objection has been assigned the number indicated in the reference line above. Please refer to that number for any correspondence related to your objection. Your objection will be processed in accordance with the procedures found in 36 CFR 218, Subparts A and B.

The Rosemont Copper Mine project is one of the first major Forest Service projects in the Nation to use the pre-decisional administrative review process (objection process) for a project implementing a land and resource management plan. This new process provides the public with an opportunity to review the draft decision and rationale, and submit objections before a final decision is made. It enables me to consider objections to help resolve issues and concerns prior to a final decision.

As the reviewing officer for the Rosemont Copper Mine project, I am committed to having an open objection process so I would like to take this opportunity to share information with you about how the remainder of the objection process will be implemented. Hopefully this will clarify any questions that you might have at this point in the process. At this time, my staff and I are carefully reviewing the submitted objections and the Final Environmental Impact Statement to ensure the analysis meets current requirements and, based on the objections submitted, to determine whether changes are warranted to improve upon the analysis and decision.

In some cases, at the request of an objector, I may determine that a resolution meeting is needed to work with objectors to explore opportunities to resolve all or part of an objection. If opportunities for resolution are identified, and I do decide to hold a resolution meeting, participation in the meeting will be guided by me, along with help from the responsible official, as per the requirements found in 36 CFR 218.11(a). The issues to be discussed and the format of the meeting, including how objectors can most effectively participate, are also left to my discretion. Members of the public may attend to listen to the discussion.

I want to emphasize that any potential objections resolution meeting will be scheduled only for those issues that are determined to have the potential for resolution. Examples of reasons why an issue may have no potential for resolution include suggested remedies that would violate existing law, policy, or regulation; suggestions that are contrary to the best available science; or suggestions that would alter well-reasoned and legally compliant choices made by the responsible official. Additionally, the purpose of any potential resolution meeting is not to re-state the contents of the objection letter or to bring forward information not previously submitted. As objectors for the Rosemont Copper Mine Project, your written objections have provided us with a lot of information to work from, allowing any follow-up resolution meeting to focus on a discussion of proposed remedies related to the specific issues that I identify with an opportunity for resolution.

The Rosemont Copper Mine Project has generated a lot of interest both locally and nationally. Because of the number of individual objections we received, and the large number of objection issues presented within those objections, I have decided to exercise my discretion under 36 CFR 218.26(b) to extend the time for the objection review. This will allow my staff and me to conduct

a thorough review of the issues brought forward. With this extension I intend to issue my final written response to all the objections submitted by April 30, 2014. My written response will set forth the reasons for the responses. I will group my response by similar objections rather than a point-by-point response for each issue raised. My response may also contain direction to the responsible official to implement prior to signing a final record of decision and will be the final decision of the U.S. Department of Agriculture on the objections.

If you have any questions or need additional information please feel free to contact my office at objections-southwestern-regional-office@fs.fed.us.

Sincerely,

Dear

We have received your objection to the Rosemont Copper Mine Project and assigned it the number 14-03-00-0XXX-O218. However, in examining your objection I have determined that you have not met the requirements for having an objection considered as part of the pre-decisional administrative review process. Therefore, I am setting aside your objection from review, pursuant to 36 CFR 218.10 of the objection procedures.

More specifically, the regulations at 36 CFR 218.10(a)(3) direct that only those who have submitted timely and specific written comments regarding the proposed project or activity during scoping or another designated opportunity for public comment may file an objection. Because your objection does not meet this requirement I must set aside your objection from further review.

Your objection will be forwarded to the Responsible Official for consideration as he determines appropriate outside the pre-decisional objection process.

Sincerely,

Dear

We received your objection to the Rosemont Copper Mine Project and assigned it the number 14-03-00-0XXX-O218. However, in examining your objection I have determined that you have not met the requirements for having an objection considered as part of the pre-decisional administrative review process. Therefore, I am setting aside your objection from review, pursuant to 36 CFR 218.10 of the objection procedures.


More specifically, the regulations at 36 CFR 218.10(a)(4) direct that issues included in the objection must be based on previously submitted specific written comments and the objector must provide a statement demonstrating a connection between the comments and the objection issues. Because your objection does not meet this requirement I must set aside your objection from further review.

Your objection will be forwarded to the Responsible Official for consideration as he determines appropriate outside the pre-decisional objection process.

Sincerely,

MINING CLAIMS AND SITES ON FEDERAL LANDS





Cover photo: BLM historical database
Inside photos: Ron Landberg

Editing by Kathy Rohling, layout and design by Janine Koselak
BLM National Science and Technology Center

P-048

Online version revised 05/11

FOREWORD

The Bureau of Land Management (BLM) administers over 258 million acres of public lands and 700



million acres of subsurface minerals nationwide. BLM is responsible for the management of these lands, their resources, and their various values, with focus placed on what will best serve the needs of the American people. Management is based upon the principles of multiple use and sustained yield—a combination of uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources. These resources include recreation, range, timber, minerals, watershed, fish and wildlife habitat, and natural, scenic, scientific, and cultural values.

The Federal Land Policy and Management Act (FLPMA) of 1976 launched a new era for public land management in America. The Act provides that the public lands remain under the stewardship of the Federal Government, unless disposal is in the national interest, and that their resources be managed under a multiple-use concept that will best meet the present and future needs of the American people. This pamphlet provides information on one facet of one of these multiple uses: activities under the General Mining Law of 1872, as amended.



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INTRODUCTION

There are three basic types of minerals on Federal lands:

1. Locatable (subject to the General Mining Law of 1872, as amended)
2. Leasable (subject to the various Mineral Leasing Acts)
3. Salable (subject to mineral materials disposed of under the Materials Act of 1947, as amended)



Federal laws, regulations, and legal decisions have defined these minerals. Only those minerals that are locatable are discussed in this pamphlet.

The General Mining Law of May 10, 1872, as amended (30 U.S.C. §§ 22-54 and §§ 611-615) is the major Federal law governing locatable minerals. This law allows citizens of the United States the opportunity to explore for, discover, and purchase certain valuable mineral deposits on those Federal lands that are open for mining claim location and patent (open to mineral entry). These mineral deposits include most metallic mineral deposits and certain nonmetallic and industrial minerals. The law sets general standards and guidelines for claiming the possessory right to a valuable mineral deposit discovered during exploration. The General Mining Law allows for the enactment of State laws governing location and recording of mining claims and sites that are consistent with Federal law. The Federal regulations implementing the General Mining Law are found at Title 43 of the Code of Federal Regulations (CFR) in Groups 3700 and 3800.

This pamphlet gives a brief introduction to the Mining Law Administration program on Federal lands administered by the BLM. The last section provides additional sources for more information on the following topics:

- Geology and mineral resources of a particular area
- Mining and milling techniques
- Surface protection and reclamation requirements
- Other Federal and State legal requirements

The General Mining Law of 1872, as amended, has five elements:

1. Discovery of a valuable mineral deposit
2. Location of mining claims and sites
3. Recordation of mining claims and sites
4. Annual maintenance (annual assessment work or annual fees) for mining claims and sites
5. Mineral patents

The BLM's Mining Law Administration program involves mining claim recordation, annual maintenance (annual assessment work or annual fees), mineral patents, and surface management.

EXPLANATION OF “DISCOVERY”



Locatable Minerals

The General Mining Law of 1872, as amended, opened the public lands of the United States to mineral acquisition by the location and maintenance of mining claims. Mineral deposits subject to acquisition in this manner are generally referred to as “locatable minerals.” Locatable minerals include both metallic minerals (gold, silver, lead, copper, zinc, nickel, etc.) and nonmetallic minerals (fluorspar, mica, certain limestones and gypsum, tantalum, heavy minerals in placer form, and gemstones). It is very difficult to prepare a complete list of locatable minerals because the history of the law has resulted in a definition of minerals that includes economics.

Starting in 1873, the United States Department of the Interior (DOI) began defining locatable minerals as those minerals that are recognized as a mineral by the standard experts, are not subject to disposal under some other law, and make the land more valuable for mining purposes than for agriculture. Minerals normally locatable on lands acquired (purchased or received) under the Acquired Lands Act of 1947 by the United States or found on American Indian reservations are subject to lease only (43 CFR Group 3500). Therefore, it is easier for BLM to list the minerals that are not locatable because of the complexities listed previously.

Since July 23, 1955, common varieties of sand, gravel, stone, pumice, pumicite, and cinders were removed from the General Mining Law and placed under the Materials Act of 1947, as amended. Use of salable minerals requires either a sales contract or a free-use permit.

Disposals of salable minerals from BLM-administered lands are regulated by 43 CFR Part 3600.

Uncommon varieties of salable-type minerals may be locatable if the deposits meet certain tests created by various judicial and administrative decisions. See McClarty v. Secretary of the Interior, 408 F. 2d 907 (9th Cir., 1969). Federal certified mineral examiners determine uncommon variety on a case-by-case basis. (See 43 CFR Part 3830, Subpart C, for further information concerning the locatability of minerals.)

Since 1920, the Federal Government has leased fuels and certain other minerals (43 CFR Parts 3000-3590). Today, minerals that are subject to lease include oil and gas, oil shale, geothermal resources, potash, sodium, native asphalt, solid and semisolid bitumen, bituminous rock, phosphate, and coal. In Louisiana and New Mexico, sulphur is also subject to lease.

Discovery of a Valuable Mineral Deposit

Federal statute does not describe what constitutes a valuable mineral deposit, therefore the government has adopted the “prudent man rule.” This rule determines value based on whether or not a person will consider investing time and money to develop a potentially viable mineral deposit. This rule was first stated by the DOI in 1894, in the adjudication of Castle v. Womble, 19 L.D. 455 (1894), the holding of which states:

“...where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine, the requirements of the statute have been met.”

The U.S. Supreme Court approved this definition in Chrisman v. Miller, 197 U.S. 313 (1905).

The DOI's Solicitor issued an opinion in 1962 on the issue of widespread nonmetallic minerals with questionable marketability. The Solicitor noted a need for a distinct showing that the mineral could be mined, removed, and marketed at a profit. In 1968, the U.S. Supreme Court approved the opinion in U.S. v. Coleman, 390 U.S. 602-603 (1968). The marketability test is supplemental to the prudent man rule and considers deposit economics and market entry. The claimant is required to show a reasonable prospect of making a profit from the sale of minerals from a claim or a group of contiguous claims.

DOI decisions require a discovery on each claim based on an actual physical exposure of the mineral deposit within the claim boundaries. The DOI's holding in Jefferson-Montana Copper Mines Co., 41 L.D. 321 (1912), established the full test for a lode claim:

“To constitute a valid discovery upon a lode claim, three elements are necessary:

1. There must be a vein or lode of quartz or other rock-in-place
2. The quartz or other rock-in-place must carry gold or some other valuable mineral deposit
3. The two preceding elements, when taken together, must be such that as to warrant a prudent man in the expenditure of his time and money in the effort to develop a valuable mine.”

For traditional placer claims, in addition to proof of a discovery of a pay streak, each 10 acres must be shown to be mineral-in-character (there is a reasonable expectation of further economic mineral under these lands). Mineral-

in-character may be based on geologic inference from adjoining lands and a reasonable opportunity for profitable extraction. An actual exposure of the valuable mineral deposit is not necessary. Mineral-in-character may be used to show the potential extent of the valuable mineral deposit on the claim(s), but cannot be used alone for such purposes.

Under the holding in Schlosser v. Pierce, 93 I.D. 211 (1986), contiguous mining claims on the same mineral deposit may be grouped together into a logical mining unit and evaluated as an economic unit. Each claim must still contain a physical exposure of the ore-bearing mineral deposit whose value meets or exceeds the cutoff grade for the mining of the mineral deposit as a whole.

EXPLANATION OF “LOCATION”



Mining Claims and Sites

A person who is a citizen of the United States or has declared an intention to become a citizen with the Immigration and Naturalization Service may locate and hold a mining claim or site. A corporation organized under State law is considered a citizen and may locate and hold a mining claim or site. A corporation is held to the same standards as a citizen. Non-citizens are not permitted to own or have an interest in mining claims or sites. There is no limit to the number of claims and sites that you may hold as a qualified claimant, as long as the requirements of the General Mining Law have been met.

A mining claim is a selected parcel of Federal land, valuable for a specific mineral deposit or deposits, for which you have asserted a right of possession under the General Mining Law. Your right is restricted to the development and extraction of a mineral deposit. The rights granted by a mining claim protect against a challenge by the United States and other claimants only after the discovery of a valuable mineral deposit. The two types of mining claims are lode and placer. In addition, mill sites and tunnel sites may be located to provide support facilities for lode and placer mining claims (43 CFR Part 3832).

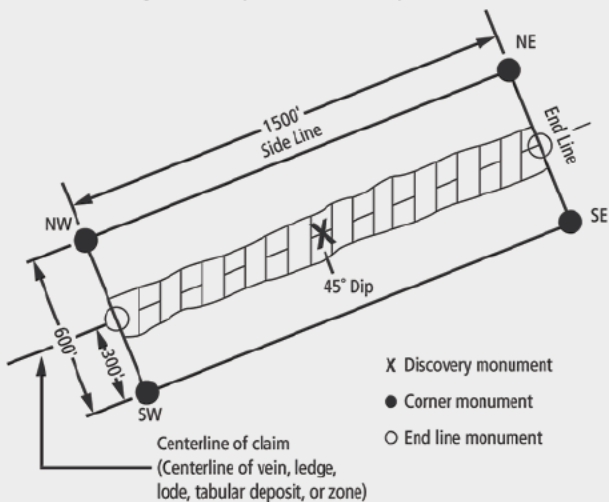
Lode Claims cover classic veins or lodes having well-defined boundaries and also include other rock in-place bearing valuable mineral deposits. Examples include quartz or other veins bearing gold or other metallic mineral deposits and large volume, but low-grade disseminated metallic deposits, such as Carlin-type gold deposits and copper-bearing granites. Lode claims are usually

located as parallelograms with the side lines parallel to the vein or lode (see Figure 1). Descriptions are by metes and bounds surveys (giving the length and compass bearing of each boundary line from a central point or monument to each corner post, and then sequentially around the perimeter of the claim). Federal statute limits a lode claim to a maximum of 1,500' in length along the vein or lode. The width is a maximum of 600', 300' on either side of the centerline of the vein or lode. The end lines of the lode claim must be parallel to qualify for underground extralateral rights. Extralateral rights involve the rights to minerals in vein or lode form that extend at depth outside the vertical boundaries of the claim. (43 CFR Part 3832, Subpart B).

Placer Claims cover all those deposits not subject to lode claims. Originally, placer claims included only deposits of mineral-bearing sand and gravel containing free gold or other detrital minerals. By congressional acts and judicial interpretations, many nonmetallic bedded or layered deposits, such as gypsum and high- calcium limestone, are located as placer claims. Where possible, placer claims are to be located by legal subdivision, such as the E1/2NE1/4NE1/4, Section 2, Township 10 South, Range 21 East, Mount Diablo Meridian (30 U.S.C. § 35 and 43 CFR 3832, Subparts A and B). The maximum size of a placer claim you may locate is 20 acres (see Figure 2). An association of two locators may locate 40 acres, and three may locate 60 acres, etc. The maximum area of an association placer claim permitted by law is 160 acres for eight or more persons.

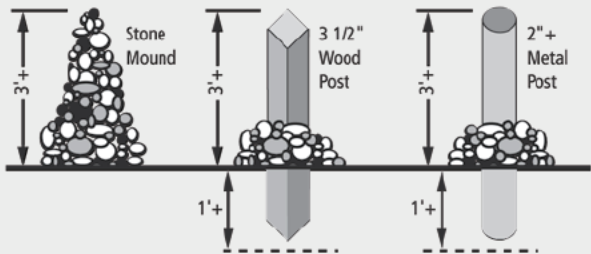
The maximum size of a placer claim for a corporation is 20 acres per claim. Corporations may not locate association placer claims unless they are in association with other private individuals or other corporations as co-locators. (43 CFR Part 3832, Subpart B).

Drawing of an ideal lode mining claim (Metes and Bounds survey method) in California (Cal. Pub. Res.



Code, Chapt. 4, Sec. 2316).

Most State laws require conspicuous and substantial monuments for all types of claims and sites.



NOTE: Many States have other requirements for monuments. Other forms of monuments can be used in California as long as they are conspicuous and substantial. Due to wildlife fatalities, BLM does not allow the use of perforated or uncapped pipe as monuments, corner posts, or side line posts.

Figure 1. Example of Methods of Monumenting Mining Claims in California

Drawing of a section of land showing types of placer mining claims and a mill site. The legal description method is based on the U.S. Public Land Survey.

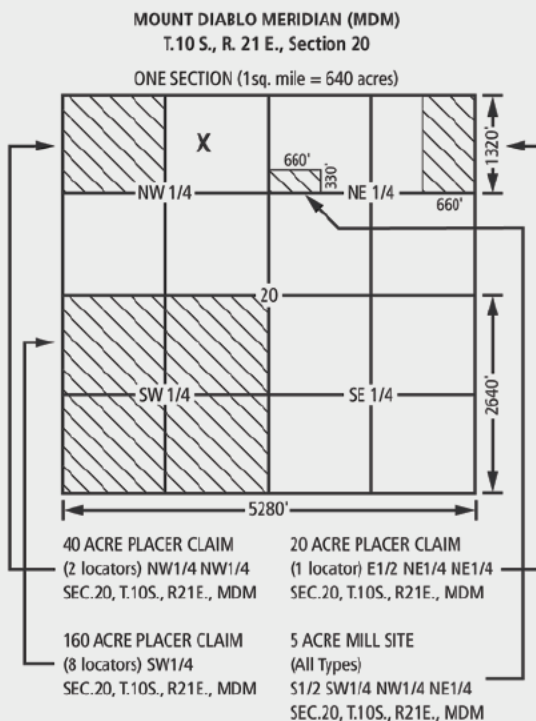


Figure 2. Methods of Describing Placer Mining Claims and Mill Sites

Mill Sites must be located on non-mineral land. The mill site may be located in the same manner as a lode or a placer mining claim. Its purpose is to either:

- Support a lode or placer mining claim mining operation; or
- Support itself independent of any particular claim by custom milling or reduction of ores from one or more mines.

A mill site must either include the erection of a mill for grinding, crushing, flotation, or chemical processing of

ores; or a reduction works for chemical processing of ores, siting of furnaces, and related facilities. This may include other uses reasonably incident to the support of a mining operation, including tailing impoundments, waste dumps, and leach pads. Mill sites are described either by metes and bounds surveys or by legal subdivision. The maximum size of a mill site is 5 acres (see Figure 2). You may hold as many mill sites as necessary for the support of the mining operation. (43 CFR Part 3832, Subpart C).

Tunnel Sites are tunnels excavated to develop a vein or lode. They are also used for the discovery of unknown veins or lodes. To locate a tunnel site, place two stakes up to 3,000' apart on the surface axis of the proposed tunnel. The compass bearing and distance of the tunnel must be posted at the entrance to the tunnel. Tunnel sites must be recorded in the same manner as lode claims. Some States require additional centerline stakes (for example, in Nevada, centerline stakes must be placed at 300' intervals).

Lode claims must be located over any or all blind (not known to exist at the surface) veins or lodes discovered by the tunnel in order to maintain possession of the lodes or veins. The maximum distance these lode claims may cover is 1,500' on either side of the centerline of the tunnel. This, in essence, gives you the right to prospect underground an area 3,000' wide and 3,000' long. Any mining claim you locate for a blind lode discovered while driving a tunnel has the same location date as the date of the location of the tunnel site. (43 CFR Part 3832, Subpart D).

Federal Lands Open to Mining

There are 19 States where you may locate mining claims or sites. These States are Alaska, Alabama, Arizona, Arkansas, California, Colorado, Florida, Idaho,

Mississippi, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. The BLM manages the surface of public lands in these States and the Forest Service manages the surface of National Forest System lands. The BLM is responsible for the subsurface minerals on both its public lands and National Forest System lands.

You may prospect and locate mining claims and sites on lands open to mineral entry. Claims may not be located in areas closed to mineral entry. Subject to valid existing rights, these areas are withdrawn from further location of mining claims or sites.

Areas withdrawn from mineral entry include National Parks, National Monuments, American Indian reservations, most reclamation projects, military reservations, scientific testing areas, most wildlife protection areas (such as Federal wildlife refuges), and lands withdrawn from mineral entry for other reasons. Lands withdrawn for power development are subject to mining location and entry only under certain conditions. Mining claims may not be located on lands that have been:

- Designated by Congress as part of the National Wilderness Preservation System
- Designated as a wild portion of a wild and scenic river
- Withdrawn by Congress for study as a wild and scenic river

There is usually a 1/4-mile buffer zone withdrawn from location of mining claims or sites from either side of a river while the river is being studied for inclusion in the Wild and Scenic Rivers System. Additions to the National Wilderness Preservation System are withdrawn to mining claim and site location at the time of designation by Congress. Mining activities are permitted only on those

mining claims that can show proof of a discovery either by December 31, 1983, or on the date of designation as wilderness by Congress.

Staking a Mining Claim or Site

Federal law simply specifies that claim and site boundaries must be distinctly and clearly marked to be readily identifiable on the ground (43 CFR Part 3832). The General Mining Law allows States to establish their own laws regarding the manner in which mining claims and sites are located and recorded. Location requirements include the placement, size, and acceptable materials for a corner post or a discovery monument. Check with the proper State agency before locating mining claims. State agencies may include the State's geological survey, mineral resource department, lands commission, or department of environmental protection.

Generally, staking a mining claim requires:

- Erecting corner posts or monuments
- Posting a notice of location on a post or monument in a conspicuous place (see Figures 1 and 2)
- Complying with the requirements of 43 CFR Part 3830, 3832, and 3833

The conspicuous place on the mining claim is usually the point of discovery. The discovery point must be tied to some well-known, permanent object. Examples of permanent objects include an existing cadastral survey monument, a benchmark, a bridge, a fork of a stream, or a road intersection. Several States also require side-line or end-line posts or monuments for claims. Mining claims and sites described by legal subdivision in some States do not require the erection of corner monuments (see Figure 2). However, all mining claims and sites must have a location or discovery monument. Be sure to check

what the law requires in the State where the mining claims and sites are to be located.

For a specific tract of land, check the official land records at the BLM State or field office responsible for administering the land area. Rather than looking randomly through the records for lands open to location, it is better to restrict your search to a specific area of interest. Topographic maps of the area (published by the U.S. Geological Survey) provide the legal description (meridian, township, range, section) of such lands. Visit the local BLM field office or the BLM State Office and check maps, the BLM Master Title Plats, mining claim records, and files. Ultimately, it is your responsibility to determine if there are prior existing mining claims on the ground.

Lands previously patented under the Stock Raising Homestead Act of 1916, as amended, may be entered and mining claims located under special procedures (43 CFR Part 3838).

RECORDING A MINING CLAIM OR SITE



As established by Section 314 of FLPMA, as amended, your claims and sites must be recorded with the proper BLM State Office within 90 days of the date of location and recorded with the proper county in accordance with their requirements. In Alaska, claims and sites can also be recorded with the BLM Northern Field Office located in Fairbanks.

County: State laws require filing the original location notice or certificate in the county recorder's office, county clerk's office, or borough office. The proper county or borough is the one in which your claim or site is located. Each State has its own requirement for when a location notice must be filed and recorded. The maximum period is 90 days from the staking of your claim or site on the ground. However, some States require earlier filings, such as 60 or 30 days from the date of location.

Location notices must contain the following basic information (43 CFR Part 3832, Subpart A, and Part 3833, Subpart A):

- The date of location on the ground
- The names and addresses of the locator(s)
- The name of the claim or site
- The type of claim or site
- The acreage claimed
- A description of the parcel on the ground

Local printing companies, office supply stores, stationery stores, and BLM offices are sources for obtaining State location notice and certificate forms.

BLM: FLPMA (43 U.S.C. § 1744) requires you to file a copy of the official record of notice or certificate of location with the BLM within 90 days after the date of location. You must record any amendments (changes) in claim boundaries and any changes in ownership with BLM. You are required to submit a map of the claim or site boundaries. Other documents filed under State law must also accompany the copy of the official record filed with the BLM. Even if State law does not require recording, you must still file the proper documents with the BLM. Federal recording regulations in 43 CFR Part 3833 specify the information required. These requirements may be obtained from BLM State or field offices. There is a non-refundable service charge to record each new location due at the time of recording. These fees pay for the assessment year in which the mining claim or site is located. See Table 1 for the schedule of fees and service charges. FLPMA requires a finding of abandonment if you fail to record with the BLM, the county, or the borough within the prescribed 90-day period. You must use a separate location notice for each mining claim, mill, or tunnel site.

Amendments and Transfers of Interest: Your legal interest in a properly recorded mining claim or site may be conveyed in its entirety or in part. Generally, a quitclaim deed or other type of recordable conveyance document (this is governed by State law) is needed for this transfer of legal interest (43 CFR Part 3833, Subpart C). An amended location notice is necessary to show changes in the description of a claim or site, but cannot be used for a transfer of ownership (43 CFR Part 3833, Subpart B). File transfer and amendment documents with the proper county office and BLM State Office within 90 days after the transfer or amendment. The BLM has a non-refundable service charge to file amendments and

transfers of ownership for each mining claim or site. See Table 1 for the schedule of service charges. Failure to file these documents results in no notification of any action or contest initiated by the United States, and provides you no legal defense against failure to be properly served.

Abandonment or Relinquishment: If you abandon a mining claim or site or relinquish it to the Federal Government, you should file a notice with the proper county or borough office and the BLM State Office. No particular form is required; a letter is acceptable. Be sure to include the claim or site name and the BLM serial number. There is no charge to file these documents.

THE APPROPRIATE BLM STATE OFFICE IS THE ONLY OFFICIAL FILING OFFICE FOR THE FEDERAL GOVERNMENT. The only exception is the BLM Northern Field Office in Fairbanks, Alaska, which is also a filing office.

Table 1. List of Fees for Filing Mining Claim and Site Document with the BLM

New Location Notice (per claim/site) a total of \$189 that includes:	
Service Charge (recording fee)	\$15
Location Fee	\$34
Initial Maintenance Fee	\$140
Notice of Intent to Locate Mining Claims	
on Stockraising Homestead Act Lands (each notice)	\$30
Amendments/Transfers of Ownership (per claim/site)	\$10
Notice of Intent to Hold (per claim/site)	\$10
Affidavit of Annual Assessment Work (per claim/site)	\$10
Annual Maintenance Fee	\$140
Petition for Deferment of Assessment Work (per petition)	\$100
Mineral Patent Application	
10 claims or less	\$1,420
11 or more claims	\$2,840



MAINTENANCE OF A MINING CLAIM OR SITE



If you have a legal interest in 10 or fewer mining claims nationwide and also meet certain other requirements, you have the option to perform assessment work and file evidence of the assessment work as described below (43 CFR Part 3835). All other claimants must pay an annual maintenance fee per claim or site to the BLM. You must either pay the required fees or if you are qualified and desire to do so, file for a waiver from payment of fees by September 1 of each year. Failure to file for a waiver or pay the fee by September 1 results in the claim or site becoming forfeited by operation of law. (43 CFR Parts 3834, 3835, and 3836).

If you have received the first half of the mineral entry final certificate for a mineral patent application, you are exempted from payment of fees or performance of assessment work (43 CFR Part 3835). This requirement is reinstated upon cancellation of the final certificate by the BLM or upon your withdrawal of the application.

Annual Assessment Work

If you have an interest in 10 or fewer claims nationwide, you may elect to file for a waiver from payment of the maintenance fee and perform annual labor or make improvements worth \$100 each year for each mining claim held. Assessment work is work or labor that you perform that develops the claim for production (43 CFR Part 3836). Geological, geophysical, and geochemical surveys may qualify as assessment work for a limited period. Use of these surveys requires the filing of a detailed report, including basic findings. Most State laws

require the annual filing of an affidavit of assessment work with the proper county or borough, if you perform the work. FLPMA requires the filing of an affidavit of annual assessment work with both the local county or borough office and the proper BLM State Office if you elect to file a waiver from payment of the maintenance fees. The affidavit or proof of labor must be filed no later than December 30 following the filing of a waiver in the proper BLM State Office and in the county or borough recorder's office.

There is no requirement for assessment work for owners of mill or tunnel sites. If covered by a waiver, you must file a notice of intention to hold the site(s) with the BLM. If not covered by a waiver, you must pay the maintenance fee. For mill sites and tunnel sites, the need to file with the county or borough is controlled by State law.

Performance of assessment work must be within a certain period referred to as the assessment year. The assessment year begins at noon of each September 1. It ends at noon September 1 of the next year (43 CFR Part 3836). Performance of assessment work need not occur during the first assessment year of location.

A "notice of intention to hold" a mining claim or site is a letter or notice signed by you or your agent. It satisfies the recording requirement in those circumstances where an affidavit of labor cannot be filed, but an annual statement is required under State or Federal law. It must include the name and BLM serial number assigned to each claim or site and any change in mailing address of the claimant(s).

The BLM may grant a "temporary deferment of assessment work" to owners of 10 claims or less under certain conditions (43 CFR Part 3837). These are conditions that restrict or deny legal access to a mining claim. You

must begin action to regain access. There is no particular form for a petition for deferment of assessment work. Your petition can be a letter to the BLM signed by at least one of the owners of the claim. It must fully explain the legal obstacles preventing access and the actions you have taken to obtain access. Your petition must include the name(s) and BLM mining claim serial number(s) and the assessment year to be deferred. A copy of the notice to the public recorded with the county or borough must accompany the petition. A non-refundable service charge must accompany your petition for deferment of assessment work.

A deferment may not exceed one assessment year, but may be renewed for one additional year upon your request and upon approval by BLM if the legal impediment still exists. A notice of intent to hold must be filed with the BLM and the county or borough by December 30, which refers back to the granted deferment by the BLM serial number and date granted. When the deferment expires, all back assessment work or fees are due.

County: Each State has its own deadline for filing an affidavit of assessment work or notice of intent to hold. Most States require filing within 30 to 90 days after the end of the assessment year (September 1). Therefore, it is important for you to check the requirements for filing periods in the State where the claims are located.

BLM: File a copy of any of the previously mentioned documents that you record or will record with the county or borough with the BLM as well. Even if a State does not have a filing requirement, you must still file with the BLM. The deadline for filing with the BLM is December 30 of the assessment year following the assessment year of

location. A non-refundable service charge for each mining claim and site must accompany the affidavit or notice. See Table 1 for a schedule of service charges.

Your claim or site is forfeited and void by operation of law if you fail to file these documents within the prescribed period (43 CFR Part 3835, Subpart D).

THE APPROPRIATE BLM STATE OFFICE IS THE ONLY OFFICIAL FILING OFFICE FOR THE FEDERAL GOVERNMENT. The only exception is the BLM Northern Field Office in Fairbanks, Alaska, which is also a filing office.

Surface Management

Most Federal agencies have regulations to protect the surface resources of Federal lands during exploration and mining activities. You must reclaim disturbed sites after completion of exploration and mining activities. Most State governments have mining and reclamation requirements you must meet. To avoid duplication, several States have entered into cooperative agreements with Federal agencies. You should check with Federal and State agencies to determine the proper lead agency before submitting permit applications.

USDA Forest Service: Exploration and mining activities are administered by the Forest Service by regulations of the Secretary of Agriculture contained in 36 CFR 228 Part A. These regulations require that if your proposed operation could likely cause “significant disturbance of surface resources” you must submit an operating plan. If you wish to prospect, explore, and develop claims or sites in National Forests, contact the local District Ranger about operating plans.

BLM: Exploration and mining activities on BLM-administered land are controlled by the regulations of

the Secretary of the Interior contained in 43 CFR, Subparts 3715 and 3809 and for Wilderness Study Areas, 43 CFR, Subpart 3802. You are required by these regulations to prevent unnecessary or undue degradation of the land. For activities other than casual use, you are required to submit either a notice or a plan of operations. A plan of operations, which includes a reclamation plan, is required where activities involve the surface disturbance of more than 5 acres. Notices also require the submission of a reclamation plan and are submitted for exploration activities covering 5 acres or less.

There is no requirement for notifying the BLM of casual use activities. Casual use activities are those that cause only negligible disturbance of public lands and resources. For example, activities that do not involve the use of earthmoving equipment or explosives may be considered casual use.

You are required to reclaim any surface disturbing activity, even if the claim or site is declared abandoned and void or forfeited by the BLM. Reclamation is required if you relinquish the claim or site to the Federal Government. The BLM requires a reclamation bond or other financial security prior to approving your plan of operations or allowing operations under a notice to proceed.

Surface Management actions are processed at the local level. Therefore, you should contact the proper BLM field office for questions concerning plans of operation.

States: Be aware that many States have their own mining and reclamation laws. Many also have their own environmental laws to regulate air, water pollution, and use of hazardous materials. Some States, like California, Oregon, and Alaska, require a permit for use of suction

dredges. Similarly, construction activities usually require meeting the standards of a county code, as well as State public health and safety standards. Some States have entered into a memorandum of understanding (MOU) or a cooperative agreement with the BLM and the Forest Service. These agreements reduce duplication by the operator and Federal and State agencies in enforcing rules. For these reasons, you should inquire about State and local requirements before trying to mine on public lands and National Forest System lands.

The Federal Government maintains the right to manage the surface and surface resources on mining claims and sites located under the General Mining Law. This includes the use of the area for public recreational and resource management purposes that do not materially interfere with an ongoing mining activity.

The public has the conditional right to cross mining claims or sites for recreational and other purposes and to access Federal lands beyond the claim boundaries. The right of access to a mining claim or site across Federal lands does not mean that you have a right to cause unnecessary or undue degradation of the surface resources. You are liable for damages if found responsible for unnecessary loss of or injury to property of the United States.

You may not construct permanent structures, mobile structures, or store equipment without the prior approval of an authorized Federal official. Intermittent or casual mineral exploration and development do not normally justify the use of such structures (43 CFR 3715).

Mining claims and sites located on lands after the effective date of a withdrawal are null and void from the beginning. No rights are obtained by claims or sites

declared null and void by the BLM. However, a claim or site located before a withdrawal is considered a potential valid existing right. To have valid existing rights in this situation, you must have discovered a valuable mineral deposit before the date of withdrawal. Individuals who disturb resources after the effective date of withdrawal and who do not have valid existing rights may be considered in trespass and can be held liable for trespass damages. In addition, trespassers may be fined and sentenced to a term in jail.



MINERAL PATENTS



NOTE: Since October 1, 1994, the BLM has been prohibited by Acts of Congress from accepting any new mineral patent applications. The moratorium has been renewed annually through the various Interior Appropriations Acts. It is unknown how long this moratorium will continue.

A patented mining claim or millsite is one for which the Federal Government has conveyed title to you, making it private land. You may mine and remove minerals from a mining claim without a mineral patent. However, a mineral patent gives you exclusive title to the locatable minerals, and in most cases, also grants you title to the surface. Requirements for filing mineral patent applications may be found in 43 CFR Part 3860 and at BLM State Offices. Mineral patents can be issued for lode claims, placer claims, and mill sites, but not for tunnel sites.

Applications for mineral patents (43 CFR, Subparts 3861-64) consist of statements, documentation, and proofs relative to each individual claim or site and require you to demonstrate the existence of a valuable mineral deposit that satisfies the prudent man rule and test of marketability or use and occupancy. In addition, you must:

- Have the claim surveyed (if it is a lode claim, a claim described by metes and bounds, or a claim situated on unsurveyed land) by a Deputy United States Mineral Surveyor selected from a roster maintained by the BLM State Office (43 CFR, Subpart 3861)
- Pay the BLM a nonrefundable application fee (see Table 1 for the fee schedule)
- Show the BLM that you have a complete title to the mining claim or mill site

- Post a “notice of intent to patent” on the claim or site and publish it as a legal notice in a local newspaper selected by BLM for a 60-day period (43 CFR, Subpart 3862)
- Show the BLM proof that not less than \$500 worth of development work or improvements have been made to benefit each claim
- Show the BLM proof of discovery of a valuable mineral deposit for mining claims and proper use or occupancy for mill sites

A BLM land law examiner will adjudicate your application and a Federal certified mineral examiner will conduct an on-the-ground examination of your mining claim(s) to verify that a discovery of a valuable mineral has been made. For mill sites, an examination is made to verify proper use or occupancy and the mineral character of the land. This is documented in a formal mineral report. If all the requirements of the mining law and regulations have been satisfied, you may purchase the claim(s) or site(s) at the following rates: lode claims at \$5 per acre, placer claims at \$2.50 per acre, custom mill sites and mill sites associated with lode claims at \$5 per acre, and mill sites associated with placer claims at \$2.50 per acre. A mineral patent must then be issued, as required by the mining law.

THE APPROPRIATE BLM STATE OFFICE IS THE ONLY OFFICIAL FILING OFFICE FOR THE FEDERAL GOVERNMENT. The only exception is the BLM Northern Field Office in Fairbanks, Alaska, which is also a filing office.

BLM LAND AND MINERAL RECORDS



The Federal Government office with the complete set of land and mineral records for Federal lands in a particular State is the BLM State Office. The BLM State Office is the only office where the mining claim records are filed and available for public inspection. BLM also maintains its files in electronic format in a system known as LR 2000. This system may be accessed through terminals located in the BLM Public Information Centers. In Alaska, the Alaska Land Information System (ALIS) maintains the electronic record and is accessible via the Internet at <http://www.ak.blm.gov>. It is also available in the Public Information Centers in the Alaska State Office located in Anchorage and the Northern Field Office in Fairbanks. The Forest Service does not keep the official land and mineral records for the National Forests; they are deposited with the proper BLM State Office.

Federal land records include land status plats (i.e., Master Title Plats or MTPs), land survey notes and maps, mineral survey notes and maps, and the Controlled Document Index (CDI). The CDI is a microfilm copy of all grants, deeds, patents, rights-of-way, and other official actions that occurred on the lands under the administration of that BLM State Office. It is organized by legal land description only. BLM publishes a series of multicolored surface and mineral management maps (except for Alaska). These maps depict the ownership pattern of Federal lands. They may be purchased at most BLM offices.



MORE INFORMATION

Sources of Information

BLM: The BLM has been delegated by the Secretary of the Interior with the primary responsibility for administering the laws and regulations regarding the disposal of all minerals from all federally owned lands. The BLM's statutory authority here is derived from the General Mining Law of 1872, as amended (30 U.S.C. §§ 22 et seq.), the original public land authority in 43 U.S.C. §§ 2, 15, 1201 and 1457, and FLPMA (43 U.S.C. 1701 et seq.). These statutes, together with the implementing regulations (43 CFR Groups 3700 and 3800) and numerous judicial and administrative decisions that have interpreted them, make up the body of the mining law system. These laws may be examined in most BLM State Offices or in most public libraries. For information concerning BLM regulations and public lands open to mining in specific areas, contact the proper BLM State or local office. BLM State Office locations are listed in the back of this pamphlet.

USDA Forest Service: For information regarding Federal land within the National Forest System and Forest Service surface management regulations (36 CFR 228, Part A), contact the appropriate Forest Service Regional or local Ranger District Office. Forest Service regional office locations are also listed in the back of this pamphlet.

State: Information on State and local requirements and cooperative agreements between the State, the BLM, and the Forest Service may be obtained at local BLM and Forest Service offices. Otherwise, contact the appropriate State or local agency.



Geology and Minerals, Topographic Maps, and Mining Technology

United States Geological Survey (USGS): The USGS publishes many topographic maps, geologic maps, and reports. The central source of information for these maps and related materials is the Earth Science Information Center, USGS National Center, Reston, Virginia 20192. Maps and reports are available for purchase from the Branch of Distribution, Box 25286, U.S. Geological Survey, Denver Federal Center, Denver, Colorado, 80225. In addition, USGS publications can be obtained from the Internet at:

<http://ask.usgs.gov/sources.html>

and

<http://store.usgs.gov>

State: Information concerning State mining laws and regulations that supplement the General Mining Law of 1872, as amended, plus information concerning the geology and minerals of specific areas in a State, can be obtained from State geologists, geological surveys, or mining departments.

U.S. Department of the Interior
Bureau of Land Management
State Offices

BLM Alaska

222 West 7th Avenue #13
Anchorage, AK 99513-7599
907-271-5960

BLM Arizona

One North Central Avenue
Suite 800
Phoenix, AZ 85004-4427
602-417-9200

BLM California

2800 Cottage Way, W-1834
Sacramento, CA 95825-1886
916-978-4400

BLM Colorado

2850 Youngfield Street
Lakewood, CO 80215-7093
303-239-3600

BLM Eastern States

7450 Boston Boulevard
Springfield, VA 22153-3121
703-440-1600

BLM Idaho

1387 S. Vinnell Way
Boise, ID 83709-1657
208-373-4000

BLM Montana, North Dakota and
South Dakota

5001 Southgate Drive
Billings, MT 59101
406-896-5000

BLM Nevada

P.O. Box 12000 (89520-0006)
1340 Financial Blvd.
Reno, NV 89502-7147
775-861-6400

BLM New Mexico, Kansas,

Oklahoma, and Texas
P.O. Box 27115 (87502-0115)
1474 Rodeo Road
Santa Fe, NM 87505
505-438-7400

BLM Oregon and Washington

P.O. Box 2965 (97208-2965)
333 SW 1st Avenue
Portland, OR 97204
503-808-6001

BLM Utah

P.O. Box 45155 (84145-0155)
440 West 200 South, Suite 500
Salt Lake City, UT 84101
801-539-4001

BLM Wyoming

P.O. Box 1828
5353 Yellowstone Road
Cheyenne, WY 82003
307-775-6256

BLM Washington, DC Office

1849 C St., NW., LS-501
Washington, DC 20240-0001
202-452-0350

U.S. Department of Agriculture
Forest Service
Regional Offices

FS Northern Region (R-1)
Federal Building
P.O. Box 7669
Missoula, MT 59807-7669
406-329-3511

FS Pacific Region (R-6)
333 S.W. 1st Avenue
P.O. Box 3623
Portland, OR 97208-3623
503-808-2468

FS Rocky Mountain Region (R-2)
740 Simms Street
P.O. Box 25127
Golden, CO 80401
303-275-5350

FS Southern Region (R-8)
1720 Peachtree St.
Suite 760S
Atlanta, GA 30309
404-347-4177

FS Southwestern Region (R-3)
333 Broadway SE
Albuquerque, NM 87102
505-842-3292

FS Eastern Region (R-9)
626 East Wisconsin Avenue
Milwaukee, WI 53202
414-297-3600

FS Intermountain Region (R-4)
Federal Building
324 25th Street
Ogden, UT 84401-2310
801-625-5306

FS Alaska (R-10)
P.O. Box 21628
Juneau, AK 99802-1628
907-586-8806

FS Pacific Southwest Region (R-5)
1323 Club Drive
Vallejo, CA 94592
707-562-8737

FS Washington, DC Office
1400 Independence Ave. S.W.
Washington, DC 20090-6090
202-205-8333

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FOREST SERVICE MANUAL NATIONAL HEADQUARTERS (WO) WASHINGTON, DC

FSM 2800 - MINERALS AND GEOLOGY

CHAPTER 2810 - MINING CLAIMS

Amendment No.: 2800-2007-2

Effective Date: April 4, 2007

Duration: This amendment is effective until superseded or removed.

Approved: GLORIA MANNING
Associate Deputy Chief

Date Approved: 03/29/2007

Posting Instructions: Amendments are numbered consecutively by title and calendar year. Post by document; remove the entire document and replace it with this amendment. Retain this transmittal as the first page(s) of this document. The last amendment to this title was 2800-2007-1 to 2890.

New Document	2810	42 Pages
Superseded Document(s) by Issuance Number and Effective Date	2810 (Amendment 2800-2006-5, 08/31/2006)	42 Pages

Digest:

2817.23a - Adds new code and caption "Compliance with the Clean Water Act." Provides direction for approving new Plans of Operations and complying with the Clean Water Act.

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CHAPTER 2810 - MINING CLAIMS**

This chapter is concerned with the administration of the laws relative to locatable or hard rock minerals on public domain land. The administration of the mineral leasing laws is covered in FSM 2820 and mineral materials are covered in FSM 2850.

2810.1 - Authority

See FSM 2801, 2817.1, and FSH 2809.15, chapter 10.1 for further direction on the Forest Service's surface management authorities for locatable minerals.

2810.4 - Responsibility

2810.41 - Chief

The Chief has the responsibility to determine whether or not decisions of the Department of the Interior Administrative Law Judges on mining claims shall be appealed to the Interior Board of Land Appeals and/or whether to seek review of mining claim decisions by the Secretary of the Interior.

2810.42 - Deputy Chief, National Forest System

The Deputy Chief, National Forest System, has the responsibility to advise the Chief on matters relating to decisions on mining claims by the Department of the Interior Administrative Law Judges and whether or not to appeal decisions to the Interior Board of Land Appeals and/or to seek review of decisions by the Secretary of the Interior.

2810.43 - Washington Office, Director of Minerals and Geology Management

The Washington Office, Director of Minerals and Geology Management has the responsibility to advise the Chief, Deputy Chief for National Forest System, and Regional Foresters on matters relating to appeals of decision of the Department of the Interior Administrative Law Judges to the Interior Board of Land Appeals and for procedures for reviewing mining claim decisions by the Secretary of the Interior.

2810.44 - Regional Foresters

Regional Foresters have the responsibility to forward to the Director of Minerals and Geology Management, Washington Office, recommendations, background materials, and rationale for appeals of decisions of Department of the Interior Administrative Law Judges to the Interior Board of Land Appeals and/or reviews by the Secretary of the Interior.

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2811 - BASIC ELEMENTS OF GENERAL MINING LAWS

2811.1 - Lands Open to Mineral Entry

All National Forest System lands which:

1. Were formerly public domain lands subject to location and entry under the U.S. mining laws,
2. Have not been appropriated, withdrawn, or segregated from location and entry, and
3. Have been or may be shown to be mineral lands, are open to prospecting for locatable, or hard rock, minerals (16 U.S.C. 482).

In prospecting, locating, and developing the mineral resources, all persons must comply with the rules and regulations covering the national forests (16 U.S.C. 478).

2811.2 - Locatable Minerals

In general, the locatable minerals are those hard rock minerals which are mined and processed for the recovery of metals. They also may include certain nonmetallic minerals and uncommon varieties of mineral materials, such as valuable and distinctive deposits of limestone or silica.

Locatable minerals may include any solid, natural, inorganic substance occurring in the crust of the earth, except for the common varieties of mineral materials and leasable minerals. Mineral materials include sand, stone, gravel, pumicite, cinders, pumice (except that occurring in pieces over 2 inches on a side), clay, and petrified wood. Leasable minerals are coal, oil, gas, phosphate, sodium, potassium, oil shale, sulphur (in Louisiana and New Mexico), and geothermal steam.

2811.3 - Types of Mining Claims

2811.31 - Lode Claims

Lode claims may be located only for veins or lodes or other rock in place, bearing metallic or certain other valuable deposits. Lode claims may not exceed 1,500 feet in length along the vein or lode and may not be more than 300 feet on each side of the middle of the vein at the surface. No mining regulation shall limit a claim to less than 25 feet on each side of the middle of the vein at the surface. The endlines of each claim shall be parallel (30 U.S.C. 23).

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2811.32 - Placer Claims

Placer claims may be located only for valuable minerals that occur in other than vein or lode form, such as the gold contained in gravels and deposits or uncommon varieties of mineral materials. No placer claim shall include more than 20 acres for each individual claimant or up to a maximum of 160 acres for an association of eight locators. Placer claims shall conform to legal subdivisions when located on surveyed lands, unless the claim cannot be conformed to legal subdivisions, in which case a survey or plat is required, as in a gulch or shoestring placer (Snow Flake Fraction, 37 L.D. 250), with a metes-and-bounds description (30 U.S.C. 35, 36).

2811.33 - Millsite Claims

A millsite claim may not exceed 5 acres and must be described by metes-and-bounds or by legal subdivisions. When nonmineral land not contiguous to a vein or lode is used or occupied by the proprietor of the vein or lode for mining or milling purposes, the nonadjacent surface ground may be included in an application for patent for such vein or lode (30 U.S.C. 42(a)).

Where nonmineral land is needed and used, or occupied by a proprietor of a placer claim for mining, milling, processing, beneficiation, or other operations in connection with such claim, the nonmineral land may be included in an application for patent for the placer claim (30 U.S.C. 42(b)). The number of millsites that may be legally located is based specifically on the need for mining or milling purposes, irrespective of the types or numbers of mining claims involved (30 U.S.C. 42).

2811.34 - Tunnel Site Claims

A person who excavates a tunnel acquires for a distance of 3,000 feet from the face of the tunnel in a straight line and limited to the width of the tunnel, the right of possession of all veins or lodes not previously known to exist and discovered in the tunnel. After discovery, the owner may locate a lode claim on the surface extending 1,500 feet along the lode (Enterprise Mining Co., v. Rico-Aspen Consol. Mining Co., 167 U.S. 108). No rights are initiated to a vein until a lode location is properly marked on the ground. Failure to prosecute the work on the tunnel for 6 months is an abandonment of the right to all undiscovered veins on the line of such tunnel (30 U.S.C. 27).

2811.4 - Qualifications of Locators

Citizens of the United States, or those who have declared their intention to become such, including minors who have reached the age of discretion and corporations organized under the laws of any State, may make mining locations. Agents may make locations for qualified locators (30 U.S.C. 22; 43 CFR 3832.1).

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2811.5 - Requirements for Valid Mining Claim

The general mining laws impose certain obligations on a claimant who wishes to take advantage of the privileges those laws provide. A claimant must:

1. Discover a valuable deposit (FSM 2815.1, para. 1) of a locatable mineral in federally owned public domain land open to the operation of the mining laws. Satisfaction of other requirements of the 1872 act does not make a claim valid absent a discovery of a valuable deposit (30 U.S.C. 21-54).
2. Locate a claim on the valuable deposit.
3. Identify and monument the claim in the manner required by State law.
4. File in the appropriate office of the Bureau of Land Management a copy of the official record of the notice of location or certificate of location, including a description of the location of the mining claim or mill or tunnel site sufficient to locate the claimed lands on the ground. The copy must be filed within 90 days after the date of location of the claim(s).
5. Perform annual assessment work or annual labor worth at least \$100 on, or for the benefit of, the claim.
6. File a copy of an affidavit of assessment work or notice of intent to hold in the county office where the location notice or certificate is recorded.
7. File in the appropriate office of the Bureau of Land Management a copy of the affidavit of assessment work or notice of intent to hold. The copy must be filed by December 30 of each year following the calendar year in which the claim was located.

With the fulfillment of these requirements, a claimant obtains a valid mining claim. So long as such conditions continue to exist, the claimant is entitled to possession of the claim for mining purposes. It is optional with the claimant whether to apply for a patent. Patent procedures and requirements, are described in FSM 2815.

The term "valid claim" often is used in a loose and incorrect sense to indicate only that the ritualistic requirements of posting of notice, monumentation, discovery work, recording, annual assessment work, payment of taxes, and so forth, have been met. This overlooks the basic requirement that the claimant must discover a valuable mineral deposit. Generally, a valid claim is a claim that may be patented.

Although the statutes require the discovery of a valuable mineral deposit prior to the location of a claim, the courts and the Department of the Interior have recognized a right of possession, in the absence of the discovery required by statute, if the claimant is diligently prospecting. The Forest

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Service recognizes this principle, and in keeping with the policy of encouraging bona fide prospecting and mining, will not discourage or unduly hamper these activities. Rather, the Forest Service should aid the legitimate activities of a prospector making bona fide efforts to obtain a discovery on a good prospect. On the other hand, the Forest Service should oppose attempts by prospectors to build permanent structures, cut timber, build or maintain roads, unless authorized by a special use permit or approved operating plan.

A mining claim may lack the elements of validity and be invalid in fact, but it must be recognized as a claim until it has been finally declared invalid by the Department of the Interior or Federal courts.

A claim unsupported by a discovery of a valuable mineral deposit is invalid from the time of location, and the only rights the claimant has are those belonging to anyone to enter and prospect on National Forest lands.

2811.6 - Abandonment of Mining Claim

Abandonment of a mining claim may be made by a formal relinquishment of the claim by the owner, informally as a statement to that effect to others, failure to record the mining claim, or failure to file the notice of assessment work or notice of intention to hold a mining claim by December 30 of each year in accordance with Bureau of Land Management regulation (43 CFR part 3833).

2812 - PROVISIONS OF 1955 MULTIPLE-USE MINING ACT

The 1955 Multiple-Use Mining Act (69 Stat. 367; 30 U.S.C. 601, 603, 611-615) amended the United States mining laws in several respects. The act provides that common varieties of mineral materials shall not be deemed valuable mineral deposits for purposes of establishing a mining claim.

The act also provides that:

1. Mining claims located subsequent to the act shall not be used, prior to patent, for purposes other than prospecting, mining, or processing and uses reasonably incident thereto;

- (a) Mining claims located subsequent to the act are (prior to issuance of patent) subject to the right of the United States to manage and dispose of vegetative surface resources, and to the right of the United States, its permittees and licensees to use so much of the surface for such purposes or for access to adjacent land. Such other activities shall not endanger or materially interfere with prospecting, mining, and mineral processing; and

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(b) Prior to patent, a claimant may not remove or use vegetative or other surface resources except to the extent required for prospecting, mining, or processing operation, or uses reasonably incident thereto (30 U.S.C. 612).

2. The Forest Service, in cooperation with the Secretary of the Interior, or such officer as the Secretary of the Interior may designate, is responsible for determining the existence and status for unpatented mining claims. The act provides procedures by which a claim located before July 23, 1955, may become subject to the restrictions set forth in paragraph 1 (30 U.S.C. 613).

3. The owner(s) of any unpatented mining claim located prior to the act may waive and relinquish all rights there under which are contrary to limitations in paragraph 1 (30 U.S.C. 614).

4. The act may not be construed as restricting any existing rights on any valid mining claim located prior to the act, except as a result of proceedings pursuant to Title 30, United States Code, section 613 (30 U.S.C. 613) or as a result of a waiver pursuant to 30 U.S.C. 614 and 615.

2813 - RIGHTS AND OBLIGATIONS OF CLAIMANTS

2813.1 - Rights of Claimants

By location and entry, in compliance with the 1872 act, a claimant acquires certain rights against other citizens and against the United States (FSM 2811).

2813.11 - Rights of Possession Against Other Citizens (Third Parties)

A valid mining claim creates a possessory interest in the land, which may be bartered, sold, mortgaged, or transferred by law, in whole or in part, as any other real property. A locator acquires rights against other possible (peaceable) locators when the locator has complied with the applicable Federal and State laws. Where more than one locator is involved on the same land, Forest Service actions should be impartial to all known locators of that land, as the controversy is the responsibility of the locators, not the Forest Service, to settle.

Fee simple title to a mining claim passes only with issuance of patent and, when patent is limited by some special provision of law, only to the extent provided in that law (FSM 2815).

2813.12 - Rights to Minerals (Against United States)

The claimant has the right to see or otherwise dispose of all locatable minerals, including uncommon varieties of mineral materials, on which the claimant has a valid claim. Rights to common variety mineral materials depend upon the status of the claim on July 23, 1955, and on subsequent actions taken under Title 30, United States Code, Section 613 (30 U.S.C. 613).

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1. For claims which are verified as being valid prior to July 23, 1955, the claimant may dispose of common variety mineral materials for which marketability had been established as of July 23, 1955.

2. For claims located after July 23, 1955, or otherwise made subject to 30 U.S.C. 612, the claimant may not sell or otherwise dispose of common varieties but may use them for mining purposes on the claim from which they are obtained.

2813.13 - Surface Rights

Surface rights depend to some degree on the status of the claim on July 23, 1955, and on subsequent actions under Title 30, United States Code, Sections 613-614 (30 U.S.C. 613-614).

2813.13a - Claims Which Are Verified as Being Valid Prior to July 23, 1955

Such claims on which rights have not been waived and which otherwise do not come under the terms of Title 30, United States Code, Section 612 (30 U.S.C. 612), carry the following rights under the General Mining Laws:

1. Right to exclusive possession and occupancy for mining purposes, including control of the surface. Permission must be obtained from the claimant to cross the claim with a road. The Forest Service must obtain a claimant's permission to harvest timber from the claim, except for removal of dead or diseased trees which constitute a menace to the Forest.

2. Right to cut timber on the claim to use for mining purposes and to provide clearance required to conduct mineral operations.

3. Right to remove timber for conversion to lumber to be used for mining purposes, provided that the same species and substantially equivalent volume is returned for use on the claim or group of claims from which it was cut.

4. Right to sell or otherwise dispose of timber required to be cut in conducting actual mining of the mineral deposits or for clearing for surface facilities needed for mining or processing of the mineral, provided that the rate of cutting is with equal pace to the actual mining or need of surface facilities.

5. Right to cut timber from a millsite for building milling or mining facilities on the millsite.

2813.13b - Claims Validated Subsequent to Act of 1955

Such claims which otherwise come under Title 30, United States Code, Section 612 (30 U.S.C. 612) carry the same surface rights as those described in section 2812, except for the following modifications:

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1. Right to occupancy and use necessary for prospecting, mining, and processing, but not the exclusive right to the surface. Lands containing such claims are subject to the rights of the United States to manage and dispose of the vegetative resources, to manage other resources except locatable minerals, and to the right of the United States, its permittees and licensees, to use so much of the surface area necessary for such purposes and for access to adjacent lands.

2. Right to cut timber on the claim for mining uses and for necessary clearing, except that timber cut in the process of necessary clearing cannot be sold by the claimant. The United States has the right to dispose of timber and other vegetative resources.

3. Right to additional timber required for mining purposes, if timber was removed from the claim by the Forest Service after claim location. The quantity and kind of timber to be provided, free of charge from the nearest available source which is ready for harvesting, will be substantially equivalent to that previously removed from the claim.

2813.14 - Right of Access to Claim

The right of reasonable access for purposes of prospecting, locating, and mining is provided by statute. Such access must be in accordance with the rules and regulations of the Forest Service. However, the rules and regulations may not be applied so as to prevent lawful mineral activities or to cause undue hardship on bona fide prospectors and miners.

2813.2 - Obligations

In order to successfully defend rights to occupy and use a claim for prospecting and mining, a claimant must meet the requirements as specified or implied by the mining laws, in addition to the rules and regulations of the Forest Service. These require a claimant to:

1. Comply with the provisions of Title 36, Code of Federal Regulations, Part 228 - Minerals, Subpart A - Locatable Minerals (36 CFR part 228, subpart A, 1872 Act Use Regulations, FSM 2817).

2. Discover a valuable mineral deposit.

3. Perform appropriate assessment work.

4. Record notice of location and either an affidavit of assessment work, a notice of intention to hold, or the detailed report provided by the Act of September 2, 1958 (30 U.S.C. 28-1) in the appropriate Bureau of Land Management office.

5. Comply with applicable laws and regulations of Federal, State, and local governments.

6. Maintain claim corners and boundaries so that the claim may be found and identified.

7. Be prepared to show evidence of mineral discovery.

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8. Not use the claim for any purposes other than prospecting, mining, or processing operations and uses reasonably incident thereto.

In addition, a claimant must recognize the lawful rights of other users of the National Forest.

2814 - RIGHTS AND OBLIGATIONS OF UNITED STATES

2814.1 - Rights of United States

The United States has, through Congress, the right to control the disposition of resources on the public lands and to develop all necessary rules and regulations. In regard to mining claims on National Forest System lands, the Forest Service and the Department of the Interior may exercise the rights discussed in FSM 2814.11 - 2814.16.

2814.11 - Right To Examine Claims for Validity and To Contest If Appropriate

The general authority of the Secretary of the Interior with respect to public lands, is described in Cameron v. United States, 252 U.S. 450 (1920) where the court said:

By general statutory provisions the execution of the laws regulating the acquisition of rights in the public lands and the general care of these lands is confided to the Land Department, as a special tribunal; and the Secretary of the Interior, as the head of the Department is charged with seeing that this authority is rightly exercised to the end that valid claims may be recognized, invalid ones eliminated, and the rights of the public preserved . . . (cases cited):

. . . the power of the Department to inquire into the extent and validity of the rights claimed against the Government does not cease until the legal title has passed . . . (The Department's) province is that of determining questions of fact and right under the Public Land Laws, or recognizing or disapproving claims according to their merits, and of granting or refusing patents as the law may give sanction for the one or the other . . .

By interdepartmental agreement (FSM 2810.4), the Forest Service shares in administering the mining laws on National Forest System lands. FSM 2819 describes the Forest Service role and procedures in validity examinations and contests.

2814.12 - Right To Regulate Prospecting and Mining Activities

This right is contained in Title 16 United States Code, Section 551 (16 U.S.C. 551), and exercised in, among other regulations (36 CFR part 228, subpart A).

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2814.13 - Right To Manage and Dispose of Vegetative Surface Resources

The right to manage other resources (except mineral deposits subject to location under the mining laws) and the limitations on such rights on claims validated prior to July 23, 1955, are found in FSM 2812 and 2813.

2814.14 - Right To Manage and Dispose of Common Varieties of Mineral Materials

Common varieties may be sold and are not locatable (FSM 2850) except for certain claims established prior to July 23, 1955 (FSM 2812). Uncommon varieties are locatable. See FSM 2813.12 for more information on uncommon varieties of mineral materials. The most troublesome problem of mineral materials is to determine whether a particular deposit is common (and salable) or special (and locatable). This matter, in case of question, should be referred to the Forest Service mineral examiner.

2814.15 - Right To Enter and Cross Claims

The law includes the right of the United States to manage and protect national forest resources.

2814.16 - Right To Authorize Uses by Third Parties

The United States has the right to authorize uses by third parties, if it will not conflict with prior rights of a claimant.

2814.2 - Obligations

2814.21 - Respect Claim and Claimant's Property

The Forest Service must respect claims and claimants' property by using precautions to avoid damage to claim corner markers, excavations, and other mining improvements and equipment.

2814.22 - Allow Mining Claimants To Obtain Timber

(See FSM 2813.13.)

2814.23 - Prevent Violations of Laws and Regulations

Prevention of such violations regarding uses of National Forest System lands and resources includes an obligation to ensure that unauthorized uses of mining claims are eliminated, including unlawful use of buildings and other structures and the taking of common varieties of mineral materials.

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2814.24 - Provide Reasonable Alternatives

Forest officers should provide bona fide prospectors and miners reasonable alternative access routes, exploration methods, special use permits, and operating plan provisions in order that they may carry out necessary mineral associated activities without violation of laws and regulations.

2815 - ACQUISITION OF TITLE

2815.01 - Authority

The 1872 Mining Act (30 U.S.C. 22) is the authority for the patenting of valid mining claims. Requirements and procedures are found in 43 CFR 3860.

2815.04 - Responsibility

The responsibility for processing applications and passing title is primarily with the Department of the Interior (USDI). A USDI-U.S. Department of Agriculture (USDA) Memorandum of Understanding (FSM 1531.12) provides for the Forest Service to share in that responsibility regarding patent applications for National Forest System lands.

2815.05 - Definitions

Patent. A document which conveys title to land. When patented, a mining claim becomes private property and is land over which the United States has no property rights, except as may be reserved in the patent. After a mining claim is patented, the owner does not have to comply with requirements of the General Mining Law or implementing regulations.

2815.1 - Requirements for Claimant

In order to obtain a patent, a claimant must:

1. Substantiate the claim of a discovery of a valuable deposit of a locatable mineral on land open to mineral entry. The concept of valuable mineral has implications of suitable quality, sufficient quantity, relative scarcity (contrasted to common variety materials), recoverability, and marketability. The standard ordinarily applied to determine whether a discovery has been made is the prudent-man test which states: "Where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine, the requirements of the statute have been met."
2. Have a mineral surveyor make a patent survey, adjust claim boundaries, and correct errors, after which an amended location should be made.
3. Have made at least \$500 worth of mineral-related improvement per claim.

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4. Make application to the Bureau of Land Management which will review for adequacy of assertions, title, posting of notice, and other technical requirements.

5. Pay the purchase price for the land (\$2.50 per acre for a placer claim and \$5 per acre for a lode claim).

2816 - MINING ACTIVITIES IN SPECIAL AREAS

2816.1 - Wilderness and Primitive Areas

The National Wilderness Preservation System was established by the Wilderness Act of 1964 (88 Stat. 163, as amended, 16 U.S.C. 1131-1140).

2816.11 - Rights and Restrictions in Wilderness

1. Authority. Pursuant to Section 4(d)(3) of the Wilderness Act of September 3, 1964 (16 U.S.C. 1133), and subject to valid existing rights, the minerals in lands designated as wilderness were withdrawn from all forms of appropriation under the mining laws of January 1, 1984. Subsequent wilderness acts have later effective dates for withdrawal.

2. Administration of Activities. Claimants may conduct on-the-ground mining or mining related activities on valid mining claims in designated wilderness. However, before authorizing such activities under a plan of operations, the authorized officer must ensure that the claimant:

- a. Has complied with the filing for record requirements of Section 314(a)(1) and (2) of the Federal Land Management Policy Act of 1976.
- b. Made a discovery of a valuable minerals deposit before the date of withdrawal, and thus has a valid existing right as of that date.

The authorized officer must schedule an appropriate on-the-ground validity investigation by a qualified Forest Service mineral examiner when a claimant/operator files a Notice of Intention to Operate or Plan of Operations in accordance with Title 36, Code of Federal Regulations, section 228.4 (36 CFR 228.4).

In addition, the authorized officer should schedule validity investigations in response to mineral patent applications, in cases involving suspected occupancy misuse of mining claims, and for protection of Federal capital investment (such as administrative sites, trailheads, and airfields).

In accordance with 36 CFR 228.5(b), the authorized officer may approve operations for the sole purpose of performing requisite annual assessment work only when proposed activities will not cause significant impact to wilderness values and such activities are not specifically prohibited by the Wilderness Act. However, if proposed assessment work will cause significant impact and

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the operator is unable or unwilling to propose acceptable alternatives that will not cause significant impact, the authorized officer must first determine that a valid claim existed before the date of withdrawal before approving the operation.

If assessment work is not the purpose and/or the issue of validity has not been determined, 36 CFR 228.5(a)(3) provides a basis for requesting changes in the proposed plan of operations to include supporting evidence from the claimant/operator that a claim is valid. This evidence may include, but is not limited to, reports by mining engineers or geologists, data regarding grade and tonnage, production records, and assay reports, and must be verified by a Forest Service mineral examiner.

2816.12 - National Forest Primitive Areas

The same basic management concepts and procedures apply to primitive areas as to wildernesses, except the patent restrictions do not apply.

2816.2 - National Recreation Areas

The National Recreation Areas (NRA's) listed in exhibit 01 have been established by specific acts of Congress. There are certain restrictions concerning 1872 mining law activities for each national recreation area. All of the acts withdraw the minerals in the areas from location, entry, and patent under the United States mining laws.

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2816.2 - Exhibit 01

National Recreation Areas

<u>States</u>	<u>National Forest(s)</u>	<u>National Recreation Area Name</u>	<u>Reference</u>
California	Shasta-Trinity	Whiskeytown Shasta-Trinity	Public Law 89-336 (11/8/65) 79 Stat. 1295, 16 U.S.C. 460q-460q-9 (See 16 U.S.C. 460q-5)
Idaho	Sawtooth	Sawtooth	PL 92-400 (8/22/72) (86 Stat. 612) 16 U.S.C. 460aa-460aa-14 (See 16 U.S.C.460aa-9-460aa-11)
Oregon and Idaho	Wallowa-Whitman Nezperce Payette	Hells Canyon Hells Canyon	PL 94-199 (12/31/75) 89 Stat. 1117; 16 U.S.C. 460gg-460gg-12 (See 16 U.S.C. 460gg-8)
Siuslaw	Oregon	Dunes	PL 92-260 (3/23/72) 86 Stat. 99; 16 U.S.C. 460z-460z-13 (See 16 U.S.C. 460z-8)
Oregon	Siuslaw	Cascade Head Scenic Research Area	PL 93-535 (11/22/74) 88 Stat. 1732; 16 U.S.C. 541-541h (See 16 U.S.C. 541f)
Utah and Wyoming	Ashley	Flaming Gorge	PL 90-540 (10/1/68) 82 Stat. 904; 16 U.S.C. 460v-460v-8 (See 16 U.S.C. 460v-4)

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2816.3 - Wild and Scenic Rivers

All prospecting, mining operations, and all other activities on mining claims which are not perfected before inclusion of a river in the Wild and Scenic River System are subject to such regulations as the Secretary of Agriculture may prescribe to effectuate the purposes of the Wild and Scenic Rivers Act (16 U.S.C. 1280).

Subject to valid existing rights, the perfection of, or issuance of patent to, any mining claim affecting lands within the System shall confer or convey a right or title only to the mineral deposits and such rights to the use of the surface and the surface resources as are reasonably required to carrying on prospecting or mining operations and are consistent with such regulations as may be prescribed by the Secretary of Agriculture.

The regulations referred to in this section shall, among other things, provide safeguards against pollution of the river and unnecessary impairment of the scenery within the designated area.

Subject to valid existing rights, the minerals in Federal lands which are part of the System and constitute the bank or bed are situated within one-quarter mile of the bank of any river designated as wild and withdrawn from all forms of appropriation under the mining laws and from operation of the mineral leasing laws as of October 2, 1968, the date of the Wild and Scenic Rivers Act, or as of the date of inclusion of a river into the system.

The minerals in any Federal lands which constitute the bed or bank or are situated within one-quarter mile of the bank of any river designated for study as a potential addition to the System is withdrawn from all forms of appropriation under the mining laws during the periods specified in 16 U.S.C. 1278(b). This does not preclude prospecting in such a study area subject to such conditions as the Secretary of Agriculture finds appropriate to safeguard the area in the event it is subsequently included in the System.

2816.4 - Power Site Withdrawals

Mining Claims Rights Restoration Act of August 11, 1955 (Public Law 84-359; 69 Stat. 682-683; 30 U.S.C. 621-625).

1. General Provisions of Act. The Mining Claims Rights Restoration Act of 1955 provides, with certain restrictions, for mining, developing, and utilizing the mineral resources of all public lands withdrawn or reserved for power development. The Act:

- a. Requires that a mining locator file a notice of location with the appropriate Bureau of Land Management office within 60 days after the location is made.
- b. Suspends placer mining to allow the Secretary of the Interior to hold a public hearing and to consider whether to permit or prohibit placer mining.

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c. Provides for public hearings to determine whether proposed placer mining operations will substantially interfere with other uses of the land. The Secretary's order is based upon the findings from the public hearings. The act also provides for rules and regulations to govern bonds and deposits to insure restoration of lands involved in permitted placer mining operations.

The Bureau of Land Management has 60 days from the filing of a notice of a placer location to notify the claimant of any intention to hold a public hearing and thereby further delay mining activities.

2. Cooperative Case Actions. For claims on National Forest system lands, the Forest Service cooperates with the Bureau of Land Management in decisions about mining claims.

a. Action by State Director (BLM). Upon receipt of a notice of location of a placer or lode mining claim on National Forest System lands open for location under the Act of August 11, 1955, the State Director, immediately notifies the appropriate Regional Forester. At a minimum, the notification must include a copy of the notice of location, show the date it was filed in the Bureau of Land Management office, and, if it is a placer claim, must request a report.

b. Action by Forest Service. Upon such notification of a placer claim, the Forest Supervisor promptly prepares and submits a report including an environmental analysis and recommendations to the Regional Forester. The report must be based upon such field examination or other action as deemed necessary.

The Regional Forester sends a report to the State Director containing specific recommendations for or against a public hearing and for or against permitting the placer operations, setting forth clearly and concisely the reasons for the recommendation.

The Forest Service should be prepared to make a factual statement supporting its recommendation at any public hearing. Potential hazards of the proposed placer mining operations to other uses of the land, including damages from erosion and stream pollution, should be treated fully.

By the memorandum of understanding of April 1957 between the Bureau of Land Management and the Forest Service, the Forest Service has only 40 days, from the filing of a notice of a placer location in the BLM district office, to submit its report to the BLM district office manager through the State supervisor (FSM 1531.12a).

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2816.5 - Reclamation Withdrawals

The Reclamation Act of June 17, 1902, as amended and supplemented (43 U.S.C. 416), provided for withdrawal from all uses, other than those provided for by the act, of lands of two categories:

1. Lands possibly needed for the construction of irrigation works.
2. Lands which may possibly be irrigated from such works. The withdrawal authority of that act was repealed by the Federal Land Policy and Management Act of 1976 (Public Law 94-579, sec. 704, 90 Stat. 2743.) No withdrawal may be made for any purpose except under the provisions of section 204 of that act.

2816.6 - Municipal Watersheds and Other Special Areas

See FSM 2806.7 for direction on municipal watersheds and other areas which are withdrawn or in which restrictions on mining law activities exist.

2817 - SURFACE MANAGEMENT PROCEDURES UNDER 36 CFR PART 228, SUBPART A

The regulations require that operations conducted under the authority of the mining laws which might cause significant surface resource disturbance must be covered by an operating plan approved by an authorized officer of the Forest Service, generally the District Ranger. Certain activities of little impact are specifically exempt from the operating plan requirement. Operators who are uncertain that their operations require an approved plan may submit a notice of intention to operate. Based on that notice, a determination is made by the District Ranger that a plan is or is not required. All notices and plans are submitted to the local District Ranger.

2817.01 - Authority

2817.01a - Statutory Authority

1. Organic Administration Act of June 4, 1897 (16 U.S.C. 473-475, 477-482, 551). This act authorizes the Secretary of Agriculture to issue rules and regulations for the use and occupancy of the National Forests and to protect them from unnecessary environmental impacts.

2. Multiple Use Mining Act of 1955 (30 U.S.C. 611-615). This Act authorizes the Forest Service to restrict mining operations on National Forest System lands to only those uses reasonably incident to mining and in a manner that minimizes adverse environmental impacts.

2817.01b - Regulations

Title 36, Code of Federal Regulations, Part 228, Subpart A. This subpart provides direction for administering locatable mineral operations on National Forest System lands.

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2817.02 - Objectives

In managing the use of the surface and surface resources, the Forest Service should attempt to minimize or prevent, mitigate, and repair adverse environmental impacts on National Forest System surface and cultural resources as a result of lawful prospecting, exploration, mining, and mineral processing operations, as well as activities reasonably incident to such uses. This should be accomplished by imposition of reasonable conditions which do not materially interfere with such operations.

2817.03 - Policy

The statutory right of the public to prospect, develop, and mine valuable minerals and to obtain a patent shall be fully honored and protected. Proprietary information relating to those rights and obtained through the administration of the agency's mineral regulations shall be protected to the full extent authorized by law.

The regulations at 36 CFR Part 228, Subpart A apply to all unpatented millsites, tunnel sites, and mining claims, including those not subject to 30 U.S.C. 612, and to activities, primarily prospecting, which may be conducted under the mining laws but not on claims.

The regulations at 36 CFR Part 228, Subpart A shall be administered in a fair, reasonable, and consistent manner and not as a means of inhibiting or interfering with legitimate, well-planned mineral operations.

The primary means for obtaining protection of surface resources should be by securing the willing cooperation of prospectors and miners. The willingness of the majority of prospectors and miners to comply with regulations, reasonably administered, is a principal key to the protection of environmental quality in the National Forest System. Face-to-face dialog with operators is encouraged.

However, when reasonable efforts have been made to obtain compliance with the regulations and the noncompliance is unnecessarily or unreasonably causing injury, loss, or damage to surface resources, authorized officers shall take enforcement action (FSM 2817.3(5)).

In the evaluation of a plan of operations, the certified minerals administrator should consider the environmental effects of the mineral operation, including whether the proposed operation represents part of a logical sequence of activities, and whether the proposed activity is reasonable for the stage proposed. For example, consider if the volume of material to be extracted as a sample is reasonable. A 10,000 ton bulk sample may not be reasonable prior to geochemical sampling and assaying.

Additionally, questions sometimes arise as to whether a proposed or existing use or activity is required for or reasonably incident to mining operations conducted under the 1872 Mining Law (FSM 2817.23, 2817.25, and 2818.1.)

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When questions about the logical sequence of activities or whether an activity or proposed use is reasonably incident occur, the authorized officer should request the assistance of a Forest Service mineral specialist or certified mineral examiner to evaluate the situation on the ground, and advise the officer whether the proposed or existing surface use is logically sequenced, reasonable, and consistent with existing laws and regulations.

The advice should be used to help with negotiations to secure willing cooperation. If negotiations fail, the advice should be formalized using surface use determination procedures (FSM 2817.03a and FSH 2809.15, ch. 10).

2817.03a - Surface Use Determinations

If questions arise about the logical sequence of a proposed or existing activity, or whether the activity is reasonably incident, the authorized officer should request a surface use determination. Surface use determinations are investigations conducted by certified mineral examiners (FSM 2892), and formally documented in a report. Their purpose is to provide information, recommendations, and conclusions about reasonableness and justification for proposed or existing operations to the authorized officer.

The report can be as short or as long as necessary to address the issues. The level of detail for any particular section should only be as much as is relevant to supporting any conclusions and recommendations in the report, as determined by the specifics of each case. FSH 2809.15, chapter 10, provides procedures, instructions, and guidance for conducting surface use determinations and report writing.

2817.04 - Responsibility

1. Forest Supervisors. Forest Supervisors are designated to act as "authorized officers" for the administration of regulations in 36 CFR part 228, subpart A. This authority may be redelegated to District Rangers except for approval of plans of operations for Research Natural Areas, Experimental Ranges, and Experimental Forests. Before a Forest Supervisor can approve a plan of operations in one of these areas, consultation and concurrence of the Station Director is necessary.

2. Station Directors. Station Directors have authority and responsibility to review and concur in or withhold concurrence from, a plan of operations affecting Research Natural Areas, Experimental Ranges, and Experimental Forests prior to the authorizing officer's approval of such a plan.

2817.1 - Notice of Intent to Operate

Subject to certain exceptions (36 CFR 228.4(a)(1)), a notice of intent to operate is required from any person proposing to conduct operations which might cause significant disturbance of surface resources and who has chosen not to file an operating plan. A notice of intent to operate is not

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intended to be a regulatory instrument; it is a notice given to the Forest Service by an operator which describes the operator's plan to conduct operations on National Forest System (NFS) lands. The trigger for a notice of intent is the operator's reasonable uncertainty as to the significance of the potential effects of the proposed operations (70 FR 32713, June 6, 2005).

The notice of intent must include or describe:

1. Name and address of the operator.
2. Information sufficient to identify the area on the ground with reasonable certainty, preferably with maps.
3. The route of access to the area of operations.
4. The nature, in some detail, of the proposed operations, especially of surface disturbing activities, such as trenching, drill road and drill site construction, or tree cutting.
5. The proposed method of transport to the area of operations.
6. The date the operation is expected to begin and approximately the length of time to be required.

The notice is to be submitted to the District Ranger. The proposed operation described in the notice must be evaluated by the District Ranger. The District Ranger must inform the operator within 15 days after the notice is received either that the operation is exempt from the requirement for an operating plan or that one is required. If no operating plan is required for operations, that notification must be documented with a copy to the operator as promptly and simply as is feasible. The documentation should include the basis for the determination that a plan is not required. The documentation is part of the administrative record and may be helpful in subsequent administrative or judicial review. If the District Ranger determines that significant disturbance of the surface resources will likely result from the operations, the District Ranger will inform the operator of the requirement to prepare a plan of operations.

2817.11 - Determination of Significant Resource Disturbance

The determination of what is significant can come only from a fair, reasonable, and consistent evaluation of proposed operations on a case-by-case basis. The term, significant, is site-sensitive. A particular surface resource-disturbing activity in one area, such as flat sage brush-covered ground, might not be significant, while the same operation in a high alpine meadow could be highly significant.

The phrase "will likely cause significant disturbance of surface resources", which triggers the requirement of submission and approval of a proposed plan of operations (36 CFR 228.4 (a)(3)) means that, based on past experience, direct evidence, or sound scientific projection, the District

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Ranger reasonably expects that the proposed operations would result in impacts to National Forest System lands (NFS) and resources which more probably than not need to be avoided or ameliorated by means such as reclamation, bonding, timing restrictions, and other mitigations measures to minimize adverse environmental impacts on NFS resources (70 FR 32713, June 6, 2005).

2817.2 - Plan of Operations

Submission of a proposed plan of operations is required from all operators who will likely cause a significant disturbance of surface resources. Plans involving mining claims subject to Title 30, United States Code, section 612 (30 U.S.C. 612) are also subject to the restrictions of that act, and those restrictions should be incorporated in the approved plan. The plan must be submitted to the District Ranger. Prior submission and approval of a proposed plan of operations is not required if the proposed operations will be confined in scope to one or more of the exempted operations listed in Title 36, Code of Federal Regulations, section 228.4(a)(1) (36 CFR 228.4(a)(1)).

2817.21 - Required Content of a Plan of Operations

To properly serve its intended purpose, the proposed plan of operations must include the information described in paragraphs 1-8. Frequently needed information, but not required by the regulations, is enclosed in double parentheses.

1. Name, legal address and (telephone number) of the operator and of any lessees, assigns, or designees (and their duly appointed field representatives).
2. Names, legal mailing addresses, and (telephone numbers) of all owners other than the operator.
3. Name of mining district or mineralized area and the name of the claim(s) and/or property(ies) on which operation(s) will take place or will be based.
4. A location map of appropriate scale to show the general area in which operations will take place (location of claim(s) and/or property) and proposed route of access. In general, a forest recreation map should be adequate.
5. A surface disturbance map of the area within which onsite and offsite surface resource disturbing activities will, or could, take place. The scale and accuracy of the map must be adequate to permit identification of the site on the ground. A Geological Survey 7-1/2 minute topographic quadrangle map or its equivalent should suffice in most cases and should be tied to the general area location map.
6. The probable beginning and ending dates within which the proposed operation will be conducted (and, when appropriate, whether the operation will be intermittent or continuing).

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7. The type and magnitude of the proposed operations. This should be documented and closely tied to the information on the maps. The Forest Service requires sufficiently detailed information, especially on earthmoving and site clearance operations, to identify the precautions which the operator needs to take to reasonably prevent and/or minimize adverse environmental impacts on national forest surfaces during and after the proposed operations.

8. Plans for reclamation of disturbed areas not required for further operations and for erosion control, including provisions for filling excavations, grading of spoil banks, blocking of access roads, reseeding areas, and so forth. Although improvement of surface resource conditions, above those existing prior to the mining operations or preparations for future use, are desirable goals, they cannot be forced on operators as an added cost.

2817.22 - Proprietary Information

Proprietary information generally should be required only for determining the reasonableness of proposed operations. Access to, interpretation, and evaluation of necessary information identified as proprietary and secret by the operator should be on a need-to-know basis insofar as Forest Service personnel are concerned. Generally, Forest Service mining experts are best qualified to evaluate such data, and insofar as possible the information should remain under the operator's control. When, at the request of the Forest Service, the operator includes and identifies such information in a proposed operating plan, said information should be labeled "For official use only" and kept securely and separate from the rest of the operating plan.

Common types of proprietary information may include geological and geophysical interpretations, maps and directly related interpretations, other data relating to the competitive rights of the operator, and privileged commercial and financial information.

When the public requests an operating plan, a determination must be made as to whether or not the plan contains proprietary information which must be withheld. The date of the information is relevant to this determination. Trade secrets or privileged commercial or financial information will ordinarily not be disclosed if such a disclosure is: (1) likely to cause substantial harm to the competitive position of the party from which it was obtained or (2) if furnished voluntarily, is likely to impair the Government's ability to obtain further information (FSH 6209.13, sec. 11, ex. 01).

2817.23 - Review and Approval of Plans

When possible, the authorized officer or duly appointed representative shall review the plan of operations with the operator, on a person-to-person basis, to facilitate joint development of a reasonable agreement relative to the proposed operations. Consistent with the objectives in FSM 2817.02, negotiations may be needed to effect changes in the proposed operations in order to avoid unnecessary surface resource damage but without undue interference with the proposed

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operation. This may, in turn, reduce the amount of the surety bond which the operator must file with the appropriate Regional Director of Fiscal and Accounting Management before the plan of operations is approved (36 CFR 228.13(a)). In some cases, the operator and authorized officer may be able to totally eliminate the bond requirement.

The authorized officer must be fair, reasonable, and consistent in reviewing plans of operations and in determining the need for and amount of bonds required for reclamation purposes. Furthermore, the authorized officer shall bear in mind that the Forest Service function is the management and protection of surface resources in a manner compatible with reasonable and logical mining operations and not the management of mineral resources. In evaluating a proposed operating plan the authorized officer is expected to utilize mining geologists, mineral examiners, civil engineers, hydrologists, foresters, fisheries and wildlife biologists, cultural resource specialists, and landscape architects, where and when necessary.

Within 30 days after receipt of a plan of operations which meets the requirements of Title 36, Code of Federal Regulations, part 228, subpart A, (36 CFR part 228, subpart A) the authorized officer shall review the plan, prepare an environmental analysis according to instructions in FSM 1950, and notify the operator that the operating plan is:

1. Not required. (The plan of operations will serve as the "Notice of Intent to Operate").
2. Approved.
3. In need of changes or additions (to be specified).
4. Being reviewed, but that more time is necessary (for specified reasons) to complete the review. (Up to 60 additional days are allowed, but days during which the area of operations are inaccessible for inspection are not included when computing the 60-day period.)
5. Such that approval must be deferred until a final environmental statement has been prepared and filed by the Forest Service with the Council of Environmental Quality as provided in 36 CFR 228.4(f) (FSM 1950).
6. Cannot be approved because the area is not open to location and entry under the 1872 mining law.

In paragraphs 3, 4, and 5, pending approval of the plan, the authorized officer must approve any operation which will meet the environmental protection requirements of the regulations and which must be completed in order for the operator to comply with Federal and State laws.

Approval of a plan of operations by the Forest Service shall be accompanied by the following statements:

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Approval of this operating plan does not constitute recognition or certification of ownership by any person named as owner herein.

Approval of this operating plan does not constitute now or in the future recognition or certification of the validity of any mining claim to which it may relate or to the mineral character of the land on which it lies.

2817.23a - Compliance With the Clean Water Act

All newly approved Plans of Operations for mining operations on National Forest System lands must comply with the Federal Water Pollution Control Act of 1972, 33 U.S.C §§ 1251-1387 (Clean Water Act or CWA). Proposed mining activities, which can reasonably be expected to result in any discharges into waters of the United States are subject to compliance with CWA Sections 401, 402, and/or 404 as applicable.

1. CWA § 401 - Water Quality Certification: Pursuant to CWA § 401, both the Forest Service and the mining operator have CWA requirements to meet. If the mining activity “may result in any discharge into the navigable waters,” (CWA, Title IV, § 401(a) (1), 33 U.S.C. 1341(a), 1972) the mining operator must obtain a 401 certification from the designated CWA federal, state or tribal entity, typically the state. This 401 certification from the designated entity certifies that the operator’s mining activities and associated best management practices (BMPs), mitigation and/or reclamation are in compliance with applicable provisions of state, federal and/or tribal water quality requirements of the CWA. The mining operator must give a copy of this 401 certification to the Forest Service prior to the Agency approving the Plan of Operations. Pursuant to CWA, the Forest Service cannot authorize a Plan of Operations until the 401 certification has been obtained or waived by the designated entity. Finally, the Forest Service may not authorize a Plan of Operations if the designated entity denies the certification.

2. CWA § 402 - National Pollutant Discharge Elimination System (NPDES) Permit: During the analysis of a mining proposal, if the Forest Service determines that a point source discharge into a stream or other water body can reasonably be expected to occur, the Agency should inform the proponent that a CWA § 402 NPDES permit will be required. The Forest

Service has no authority over the issuance of CWA § 402 NPDES permits. The state is usually the designated CWA entity for these permits, although a tribe or the U.S. Environmental Protection Agency may be responsible in some areas.

3. CWA § 404 - Dredge & Fill Permit: If proposed mining operations will result in dredged or fill materials being discharged into waters of the United States, the Forest Service should inform the proponent that a CWA § 404 permit may be required. The Army Corps of Engineers district in which the proposed activities are to take place should be consulted by the proponent to obtain an appropriate permit.

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The Forest Service should request that the operator provide the Agency with a copy of the operator's 401 certification request made to the designated CWA entity. If the Forest Service does not receive a copy of the CWA § 401 certification from either the operator or the designated CWA entity within 60 days (or other reasonable time frame according to the entity's own CWA implementing regulations and/or guidance) of the operator's submittal, the Forest Service should then send a letter (and require delivery confirmation) to the designated CWA entity and:

- a. Identify the operator and the proposed activities,
- b. Provide a copy of the operator's requested certification, and
- c. Notify the designated CWA entity that the Forest Service has not received the agency's decision on the 401 certification. Request that the designated CWA entity respond to this letter with a decision within 30 days from its receipt. Inform the designated CWA entity that if no response is received, the Forest Service will consider the certification to be waived with respect to the proposed Plan of Operations.

If the designated CWA entity issues any of the above permits or certifications to the mining operator, the substantive provisions of these water quality instruments that have not already been included in the Forest Service terms and conditions of the plan approval should be noted in the case file as additional state, federal or tribal requirements of the operator's Plan of Operations.

In addition, if the Forest Service has a CWA agreement with the state in which operations are to occur, the Agency may be a "designated management agency" (DMA) for CWA implementations on NFS lands and have responsibilities to ensure that water resources are protected using nonpoint source controls. Therefore, a Plan of Operations may also include measures the Agency determines necessary to protect water resources, e.g. BMPs, in addition to any others listed by the state, tribe or federal entity. Ideally the terms and conditions necessary to protect water quality on NFS land would be an interactive process with the state, and would include preventive, protective and/or restorative measures for both point and nonpoint pollution sources. This cooperation is particularly important when dealing with impaired waters as defined by the CWA § 303(d), where no further water resource degradation is allowed.

2817.24 - Bonds

Prior to approval of a plan of operation, the operator may be required to furnish a guarantee to perform reclamation work in an amount equal to the estimated cost of that work. Guarantee may be in the form of approved surety bonds, cash bond, or irrevocable letter of credit (FSM 6562). If security in lieu of surety bond is received, the security will be sent to the Regional Director of Fiscal Management. If the guarantee is cash, the check or money order should be drawn payable to the Forest Service, U.S. Department of Agriculture. If a surety bond is submitted, the surety must be among those appearing on the quarterly list of acceptable sureties furnished by the Treasury Department and authorized to do business in the state in which the operation occurs.

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Whenever a bond furnished under an approved plan of operations shall be found unsatisfactory, a new bond that is satisfactory must be furnished within 15 days from the date the operator is notified that the bond in question is not satisfactory.

The release of the surety bond or equivalent cash deposits is conditioned upon the Forest Service's acceptance of the operator's reclamation of the disturbed surface resources in accordance with Title 36, Code of Federal Regulations, section 228.8(g) (36 CFR 228.8(g)).

The authorized Forest Service officer must, in writing, promptly relieve the operator from any further reclamation responsibilities on those areas on which such reclamation requirements agreed upon in the approved plan of operation have been completed and accepted by the Forest Service. This may occur piecemeal, if the reclamation takes place in approved stages.

All reasonable effort should be made, through agreements with States which require bonds for reclamation disturbances in National Forests, to avoid double bonding.

2817.24a - Reclamation Bond Estimates

Obtain performance bonds to cover the estimated reclamation costs for prospecting, mining, and other mineral operations on National Forest System lands (FSM 6561.4). When estimating such bonds, estimators should follow the guidance found in the Forest Service's *Training Guide for Reclamation and Administration*, adopted in April 2004 for plans of operations authorized and administered under Title 36, Code of Federal Regulations, part 228, subpart A (36 CFR part 228, subpart A).

2817.24b - Reclamation Bond Reviews

All reclamation bonds will be annually reviewed for adequacy, considering such factors, for example, as changing site conditions and unforeseen disturbances.

2817.25 - Access

The term, "access," as used in Title 36, Code of Federal Regulations, part 228, subpart A (36 CFR part 228, subpart A), is limited to operations under the 1872 mining law and refers to means of ingress and egress, such as roads, trails, bridges, tramways, and landing fields for aircraft. It refers also to modes of transport, such as any type of wheeled or tracked vehicle, whether used on or off roads; to any type of aircraft and boat; and to saddle and pack animals. Access to patented mining claims, mineral leases, and private property inholdings are not subject to 36 CFR part 228, subpart A nor to the access provisions as discussed herein.

Not all means or modes of access in connection with operations under the 1872 mining law require advance approval (36 CFR 228.4(a) and 228.12).

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Any person prospecting, locating, and developing mineral resources in National Forest System lands under the 1872 mining law has a right of access for those purposes. Such persons need not have located a mining claim to exercise that right.

Operations are defined as “[a]ll functions, work, and activities in connection with prospecting, exploration, development, mining or processing of mineral resources and all uses reasonably incident thereto, including roads and other means of access on lands subject to the regulations in this part, regardless of whether said operations take place on or off mining claims.” (36 CFR 228.3(a).) Unless modified by the Forest Service and agreed to by the operator/claimant, approval of an operating plan includes approval of the means of access and modes of transport described in the plan. Road construction or restoration on mining claims covered by an operating plan requires no separate permit or written authorization and neither are subject to charge.

An approved operating plan is not required for use of vehicles on existing public roads and Forest Development Roads. However, use of existing Forest Development Roads is subject to the road regulations, 36 CFR part 212, and to control in accordance with FSM 7770.

Commercial hauling on existing roads requires a road use permit if the road is posted with this requirement under 36 CFR 212.7(a)(2). Such use may require deposits for maintenance or reconstruction work to accommodate the planned use.

An operator must receive advance approval to use existing roads that have been closed by or with the approval of the Forest Service. Use of such closed roads must be authorized through the plan of operations approval process.

If no operating plan is required under 36 CFR 228.4(a)(1), as would be the case if after receiving a notice of intent the authorized officer determines that significant disturbance of surface resources is not likely to occur, no special authorization is necessary. For instance, in the situation where the road is closed only by a locked gate, the operator/claimant should be provided access through the gate as necessary to accomplish the proposed activity.

Reasonably necessary use of vehicles off roads by persons operating under the 1872 mining law in areas closed to off road use of vehicles does not in itself automatically require an operating plan. An operating plan is required when such use will likely result in significant disturbance of surface resources. Operators intending to use vehicles off roads in areas closed to such use are required to file a notice of intent with the authorized officer when the activity or use might cause significant disturbance of surface resources.

Provisions in an operating plan for regulating means of access should be evaluated in comparison with existing criteria in FSM 7721.1 governing similar uses for other purposes. This helps to maintain consistent treatment of National Forest System users.

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The Forest Service is not obligated to approve access if the proposed means of access or mode of transport is not reasonably necessary for the work to be performed for prospecting, locating, and developing mineral resources. An operator who proposes means or modes of access that will result in significant disturbance of surface resources will be required to justify the proposal. Forest Service minerals geologists or mineral examiners should be consulted in evaluating such justification. The primary consideration is that the means and modes of access must be reasonably necessary for the particular situation. Road building, for instance, should no longer be condoned or accepted simply to satisfy the first year's assessment requirements or to get a bulldozer to a claim so that baseless "discovery" cuts can be made that are not justified by actual mineral evidence. Use the guides in paragraphs 1-4 to help in judging whether certain modes of access are reasonably necessary:

1. Construction of a road will not ordinarily be necessary for:
 - a. The mere acts of locating and establishing the boundaries of mining claims.
 - b. Geologic mapping, surface sampling (including geochemical), and most geophysical work.
 - c. Bulldozer work of minor scope that may be justifiable for surface mapping and sampling on mining claims, but the terrain is such that a road is not needed to get the equipment to the site.
 - d. Moving drills, accessory equipment, and personnel to drill sites if the terrain is such that a road is not needed.
2. Road construction, reconstruction, or restoration may ordinarily be justifiable for:
 - a. Controlling and mitigating surface resource disturbance when there is an intensive drilling program involving a number of drills or frequent passage of personnel, supply trucks, water trucks, and similar repetitive travel.
 - b. Underground exploration and development work requiring frequent access to the property for personnel, equipment, and supplies.
3. Under some circumstances, pack animals, helicopters, and even boats, might be justifiable alternative modes of transport.
4. The activities in paragraphs 1, 2, and 3 apply mostly to mineral exploration. Development, construction, and operations of mines, mills, and related facilities usually require good road access.

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Evaluations of proposals for construction, reconstruction, or restoration of roads should include possible alternatives. Construction to a different standard than proposed, or of a different means of access, or other modes of transport may in some situations prove less damaging to surface resources and still serve the intended purpose as well or better without adding unbearable or unjustifiable economic burdens on the operator.

2817.26 - Operations in Wilderness

FSM 2323.7 through 2323.75 cover prospecting and mining in wilderness under the authority of the mining laws. Where the direction in these sections requires permits or other authorization for prospecting, mining, and associated uses, the operating plan required by Title 36, Code of Federal Regulations, part 228, subpart A (36 CFR part 228, subpart A), and by the direction in this chapter would meet those requirements. The operating plans must include provisions for protection and management of surface resources, environment, and wilderness character.

The sensitive nature of wilderness requires an approved operating plan for those operations in wildernesses. Those activities otherwise generally prohibited within wilderness--including the use of mechanized transport, aircraft, or motorized equipment--shall be authorized only when proven to be the best management practice and to be essential (36 CFR 228.15(b)). An approved operation plan shall serve as authorization for such otherwise prohibited activities on mining claims in wilderness.

Access across wilderness to a claim or to areas in which an operator has no mining claims, which will result in any disturbance of surface resources or which is otherwise generally prohibited by the Wilderness Act, shall be authorized only by issuance of a special-use permit (FSM 2817.25).

2817.3 - Inspection and Noncompliance

1. Under Approved Operating Plan. When activities are being conducted under an approved operating plan, regular compliance inspections must be conducted to ensure reasonable conformity to the plan and to guard against unforeseen detrimental effects. The frequency, intensity, and complexity of inspection shall be commensurate with the potential for irreparable and unreasonable damage to surface resources.

2. Without Operating Plan. When operations are being conducted without an operating plan because it was determined none was required, the need for regular inspections shall be determined on a case-by-case basis. Timely inspections shall help assure conformance to the environmental protection requirements of the regulations, as well as identify operations that vary from those described in the notice of intention and which may require an operating plan.

3. Detection. Forest officers shall make note of, and report on, all operations for which neither notices of intention to operate or operating plans have been submitted. Such operations shall be identified and inspected as soon as practicable to determine if a plan of operations or a notice of intent is required.

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4. Inspector Qualifications. Inspections shall be conducted by Forest Service mineral administrators who are familiar with the equipment and methods needed to find and produce minerals and who can accurately assess the significance of surface resource disturbance. Inspectors should be capable of identifying those activities of an operator which:

- a. Are reasonably necessary to the operation,
- b. The activities could perhaps be done differently with less effect on surface resources without endangering or hindering the operation, and
- c. Activities that are unreasonable or unnecessary.

Employees who perform administration of locatable mineral operations shall be certified as a Locatable Minerals Administrator or work under the guidance and oversight of a certified Locatable Minerals Administrator (FSM 2891.03).

5. Noncompliance. Wherever practicable, acts of noncompliance should be discussed with the operator, either in person or by telephone, in an attempt to secure willing and rapid correction of the noncompliance. Such discussions shall be made a matter of record in the operator's case file. Where the operator fails to take prompt action to comply and the noncompliance is unnecessarily or unreasonably causing injury, loss, or damage to surface resources, the authorized officer must take prompt noncompliance action. See FSM 2818 for direction on resolving unauthorized residential occupancy on mining claims.

- a. Notice of Noncompliance. The first step in any noncompliance action is to serve a written notice of noncompliance to the operator or the operator's agent, in person, by telegram, or by certified mail. This notice must include a description of the objectionable or unapproved activity, an explanation of what must be done to bring the operation into compliance, and a reasonable time period within which compliance must be obtained. Continued refusal of the operator to comply after notice would usually require enforcement action.
- b. Enforcement Action. Civil or criminal enforcement, or a combination of both, are available for enforcement of Title 36, Code of Federal Regulations, part 228, subpart A (36 CFR part 228, subpart A). The decision on which procedure, or combination, to use shall depend upon the particular facts in each case and the probability of success and possible consequences. The regional mineral staff or the local Office of the General Counsel shall be consulted for advice prior to any enforcement action to ensure consistency and conformance with mineral law and regulation. The appropriate U.S. Attorney shall be consulted to coordinate the criminal and civil actions.

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(1) Civil Action. Two types of civil relief in Federal District Court are available: damage recovery and injunctive. An action to recover costs of repairing damages or to compensate for irreparable damages would be appropriate for those cases where such damages have already occurred and no further operations were being conducted or likely to be conducted. Such damage suits require extended periods of time for completion. Injunctive relief can be obtained quickly when the facts of a particular case warrant such action. There must be strong justification that the party requesting relief is suffering or would suffer irreparable harm and that harm must usually be uncompensable. Moreover, it must be likely that the complainant would actually succeed on the merits of the case.

(2) Criminal Action. In cases where unnecessary and unreasonable damage is occurring and where reasonable attempts fail to obtain an operating plan or to secure compliance with an approved operating plan, the operator may be cited for violation of the appropriate section of 36 CFR part 261 or part 262, according to existing delegation of authority.

2818 - OCCUPANCY ON MINING CLAIMS

One of the most difficult problems of the Forest Service in regard to minerals is that of unauthorized residential occupancy on mining claims. The problem arises primarily out of:

1. Imprecision in the law regarding occupancy,
2. Historical laxity of the Government in taking action against suspected unauthorized occupancy, and
3. The difficulty in legally determining intent, which is at the heart of the issue.

The basis of the occupancy issue is the 1872 Act which states, "Except as otherwise provided, all valuable mineral deposits in lands belonging to the United States, . . . shall be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase; . . ." (30 U.S.C. 22). The meaning of that statute has been broadened and clarified by court decisions and legal interpretations. For example, it is generally accepted that a claimant to an unpatented mining claim is entitled to uses of the surface that are reasonably necessary to the accomplishment of bona fide prospecting, exploration, mining, and processing of locatable minerals. On the other hand, it follows that a claimant to an unpatented claim is not entitled to certain uses of the surface where such uses are not reasonably necessary or where the claimant is not actually involved in bona fide minerals-related activities.

In order for structures, including residences, to be authorized under the United States mining laws and laws requiring the management of surface resources, two conditions must be met:

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1. The structure must be reasonably necessary for use in prospecting, mining, or processing of locatable mineral resources and,
2. The structure must be covered by an approved operating plan or special use permit. Generally, a structure is not necessary for annual assessment work.

2818.01 - Authority

Judicial decisions rendered in the 30 years since Title 36, Code of Federal Regulations, part 228, subpart A (36 CFR part 228, subpart A), was promulgated, gave content to the meaning of the term “significant disturbance.” For example, it is well established that the construction or maintenance of structures, such as cabins, mill buildings, showers, tool sheds, and outhouses on National Forest System lands constitutes a significant disturbance of National Forest System resources. *United States v. Brunskill*, 792 F.2d 938. 941 (9th Cir. 1986); *United States v. Burnett*, 750 F. Supp. 1029, 1035 (D. Idaho 1990). (70 FR 32713, June 6, 2005.)

2818.02 - Policy

The Forest Service must prevent and eliminate unauthorized use and occupancy of National Forest System lands.

2818.1 - Actions Under 1872 Act Use Regulations

Title 36, Code of Federal Regulations, part 228, subpart A (36 CFR part 228, subpart A) provides a logical and effective means of controlling new occupancy problems through the requirements for an operating plan. If the mining laws are used as justification for a new structure, the structure must be covered in an approved operating plan, in which the reasonable necessity is explained--unless the structure is authorized by a special use permit due to other considerations.

1. Potential For Need of Structures. The necessity for structures in regard to mineral activities depends upon several factors:
 - a. The stage of mineral activities,
 - b. The expected size and life of the proposed operations,
 - c. The remoteness of the site,
 - d. The amount and kind of equipment requiring protection and storage, and so forth. For example, a tool-storage structure may be a reasonable necessity if the plan of operations is for a long period of active exploration or development, and it is inconvenient to transport tools to and from the claim. On the other hand, a residence

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will not be necessary to conduct minimal assessment work on a mere indication of mineral. The area of operations will seldom be so remote, or other "needs" so compelling, as to justify residential occupancy on the claim.

2. Potential for Residential Occupancy. When it appears that residential occupancy, may be, an issue on an unpatented claim, the District Ranger shall take timely action to inform the claimant in writing of:

- a. Rights regarding use and occupancy,
- b. The requirements of 36 CFR part 228 subpart A, and
- c. The Forest Service responsibility for surface resource management and protection. Exhibit 01 is a sample letter for this purpose. The claimant should be encouraged to demonstrate the facts, reasons, and purpose for use or occupancy. The Forest Service must make a diligent effort to resolve differences through agreement and document all communications and actions relative to the requirements in paragraphs 2a-c.

Except in the most clear cut cases, the District Ranger should request the assistance of a Forest Service mineral specialist or certified mineral examiner (FSH 2809.15, sec. 10.5) to evaluate the situation on the ground, and advise the officer whether the proposed or existing surface use is logically sequenced, reasonable, and consistent with existing laws and regulations.

The advice should be used to help with negotiations to secure willing cooperation. If negotiations fail, the advice should be formalized using the surface use determination procedures (FSM 2817.03a and FSH 2809.15, ch. 10).

As stated in FSM 2817.03, willing cooperation should be sought, but legal remedies are available through the Department of Justice.

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2818.1 - Exhibit 01

Sample Letter

CERTIFIED MAIL--RETURN RECEIPT REQUESTED

2810
(Date)

(Name and address of claimant)

Dear _____:

(Introductory statement). As District Ranger, I must inform you of Forest Service policy regarding mining activity and uses of the surface on a mining claim.

The mining laws give the public the right to prospect and to locate and claim valuable mineral deposits which they may discover on certain lands. On the other hand, the mining laws prohibit a claimant from using unpatented mining claims for purposes other than for mineral-related activities. Forest Service policy is to encourage bona fide prospecting and mining and to allow uses that are reasonably necessary for these purposes, but we must oppose unauthorized uses of a claim. This policy applies to the use of claims for residences. If we determine that a claim is being used for unauthorized uses, we are required by law to take steps to end such uses.

The Federal regulations found in 36 CFR part 228, subpart A provide procedures to follow regarding mineral related activities under the mining laws on National Forest lands. Specifically they require that any activity by an operator which might cause significant surface resource disturbance must be conducted according to a plan of operations approved by the Forest Officer. (Your cabin) (Any structure which you may plan to build) (The building which you have under construction) must be covered by such a plan of operations. In order for that structure to be authorized under a plan, you must be able to show a reasonable necessity resulting from planned prospecting, exploration, or mining activities. If you have any questions about the requirements of a plan of operations or the justification for a structure, please come to see us so we can discuss it.

Sincerely,

District Ranger

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2818.2 - Uninhabitable Cabin on Mining Claim

An uninhabitable cabin on National Forest land is an administrative problem, because it may easily be repaired and used for purposes unrelated to mining. The mining claimant may give permission to have the cabin removed when the claimant realizes that it represents a hazard to the administration of the area. Until an unoccupied cabin is removed, it is the District Ranger's responsibility to question any activity involving its repair or use (36 CFR 228.10). If repairs are started on a cabin, the District Ranger shall proceed as stated in FSM 2818.1.

2818.3 - Use of Surface Use Determinations and Validity Determinations

Historically, residential occupancies which appeared to be unauthorized under the mining laws have been resolved through the use of validity determinations by the Department of the Interior. However, the regulations in Title 36 Code of Federal Regulations, part 228, subpart A (36 CFR part 228, subpart A) are believed to be the best tool--ultimately--for preventing unauthorized uses.

As is the case with policies regarding surface management procedures (FSM 2817.03), the use of face to face negotiations is the preferred method of resolving unauthorized occupancies. As part of those negotiations, the authorized officer should request the assistance and advice of a Forest Service mineral specialist or mineral examiner. If negotiations fail, the officer should request that the advice be formalized according to surface use determination procedures of FSH 2809.15, chapter 10.

Generally, the use of validity determinations should be limited to those rare occasions where the certified mineral examiner believes that it would be useful given the specific details of the case. Otherwise, the use of validity determinations should be limited to situations where valid existing rights must be verified where the lands in question have been withdrawn from mineral entry (FSM 2811.5, para. 1) or meeting Forest Service interagency agreement obligations regarding patent applications (FSM 2815).

2819 - MINING CLAIM CONTESTS

The validity test is based on the legal concept that a mining claim is not valid without a discovery of a valuable mineral deposit. Title 43, Code of Federal Regulations, section 3831. (43 CFR 3831.1) states that "Rights to mineral lands, owned by the United States, are initiated by prospecting for minerals thereon, and upon the discovery of minerals, by locating the lands upon which such discovery has been made."

1. The order of action by regulation is:
 - a. Prospecting,

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- b. Discovery, and
- c. Location of a claim.

This procedure entitles the claimant to the minerals discovered, the right to mine them, and, under certain circumstances, the right to a patent to the surface of the claim. Prior to obtaining a patent, a claimant's rights on the land are limited to those reasonably necessary in connection with prospecting, mining, or processing operations. Prior to a discovery, a claim cannot be valid. In practice, most claims are staked and located prior to discovery on the basis of a prospect or mere indication of a mineral deposit. This practice protects the claimant's rights from other prospectors, but it does not grant any rights against the United States. Department of the Interior decisions have upheld the right of a claimant to hold and work a claim prior to "discovery," provided the claimant is diligently seeking a discovery on a promising prospect. However, it remains a legal fact that a claim is not, and cannot be, valid prior to the discovery of a valuable mineral deposit.

Accordingly, if a claim is found to lack a discovery of a valuable mineral deposit by the Department of the Interior or in a Federal court, the claim is null and void. The Forest Service then is in a better position in trespass actions against a claimant for unauthorized residences or other uses. While, in fact, a claimant with a valid discovery does not have more surface rights than one without a valid discovery, judges have tended to depend heavily on validity findings because of the implications of good faith of the claimant.

- 2. The mining laws are comprised of two parts:
 - a. The statutes themselves, which are general in nature; and
 - b. The decisions of the courts and of the Department of the Interior, which interpret and apply the statutes to specific cases.

In considering whether to contest the validity of a mining claim or to challenge questionable mining claim occupancy and use, the Forest Service is guided by the pertinent statutes and decisions.

No adjudicative power has been given to the Forest Service. Thus, statements about validity are statements of belief and not formal determinations. The conclusions reached by a Forest Service mineral examiner are based on physical facts interpreted in the light of professional expertise. Consistent with those conclusions and beliefs the Forest Service should attempt to resolve conflicts without resort to legal action. If those attempts are unsuccessful, appropriate legal action is required. The facts should be referred to the Office of the General Counsel before deciding if legal action is appropriate.

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2819.1 - Forest Service Role

1. Request for Mineral Examination. When administrative problems of a mineral nature arise or unauthorized use of a mining claim is believed to exist which cannot be satisfactorily resolved, the District Ranger should submit a request to the Regional Office via the Forest Supervisor on Form FS-2800-4, Request for Mineral Examination--Mining Location. A Forest Service mineral examiner, who has been properly authorized, may go on an unpatented mining claim to make a mineral investigation. Every effort should be made for amicable entry and examination of the claims, preferably accompanied by the mining claimant or the claimant's duly appointed representative.

2. Use of Force. If the mining claimant threatens or uses force to prevent the mineral examiner from going on the land, the Forest Supervisor and regional office Mining Geologist should be notified. If the forest is unable to get the claimant to agree to the examination, it may be necessary to work through the U.S. Attorney to secure the participation and protection of a U.S. Marshal.

3. Report of Mineral Examination. The mineral examiner's findings, conclusions, recommendations, together with pictures and maps, will be compiled in a Report of Mineral Examination, and sent to the Regional Office for technical review and approval by the Regional Mineral Examiner. This report will be the basis for a decision on whether or not to contest the claim. In situations where the mineral examiner's conclusions are urgently needed, the examiner will, when possible, inform the District Ranger at the time of examination or soon thereafter.

4. Problem Resolution. Concerted effort should be made to resolve problems, or terminate unauthorized use, through reasoning, persuasion, and agreement. The knowledge that, in the opinion of a Forest Service mineral examiner, a claim is not valid can be of assistance in this respect. When this fails, contest action may be required.

2819.2 - Department of the Interior Role

Although adverse proceedings might be required for a variety of reasons, such as trespass, patent application, land classification, land clearance, and so forth, each case is initiated with a request from the Regional Forester that the land office issue a complaint. (Assuming, of course, that the claim is not supported by a verifiable discovery of a valuable mineral deposit and the action meets with the approval of the Regional Attorney.)

The most common legal action is a contest of claim validity which is conducted by and under the regulations of the Department of the Interior. To that Department, Congress has given adjudicative powers in matters relating to all the land laws, including the mining laws. The decision in a mining claim contest is a formal determination of validity. The authority of the Department of the Interior to rule on claim validity was confirmed by the Supreme Court in Best v. Humboldt Placer Mining Co., 371 US 334 (1963).

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2819.3 - Actions Before Magistrates and in Federal Court

1. Initiating Action. Action is initiated by the filing of a Forest Officer's sworn complaint with supporting affidavits (if appropriate), setting forth the nature of the offense. If probable cause appears, the complaint is followed by a summons to appear, or less frequently, a warrant of arrest. On arraignment, a not guilty plea is followed by trial. A guilty plea or decision can result in imprisonment or a fine. Typical mining claim related cases tried by magistrates have involved continuing occupancy after a mining claim is declared invalid, and off-claim road construction without a permit. Another sort of case which potentially could be tried is nonmineral occupancy of a claim, the validity of which has not been determined formally.

2. United States District Court. Numerous cases have been resolved in the Federal courts and should continue to be resolved there. Actions are initiated in the U.S. District Court and can be brought by claimants as well as by the United States.

3. Review. Suits by claimants generally seek review of decisions resulting from contests. Forest Service participation is extremely limited, since the review is to Department of the Interior decisions.

Corps of Engineers Public Interest Review

IAW 33 CFR 325.3(c)(1):

“The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people.”